IOWA STATE BOARD
OF EDUCATION
(Cite as 11 D.o.E. App. Dec. 54)

In re Mary Lee Jensen, et al.	:	
Mary Lee Jensen, Colleen and Gale Van Aernam, and Tim and Linda Irlmeier, Appellants,	:	
v.	:	DECISION
Exira Community School District, Appellee.	:	[Admin. Doc. # 3224]

The above-captioned matter was heard telephonically on April 2, 1993, before a hearing panel comprising Mr. Lee Crawford, consultant, Bureau of Technical and Vocational Education; Mr. Lyle Wilharm, consultant, Bureau of Food and Nutrition; and Kathy Lee Collins, legal consultant and designated administrative law judge, presiding. Appellants Mary Lee Jensen, Gale Van Aernam, and Tim Irlmeier were telephonically "present," unrepresented by counsel. Appellee Exira Community School District [hereafter, "the District"] was also present by telephone in the person of Superintendent Otto Faaborg, also unrepresented by counsel.

An evidentiary hearing was held pursuant to procedures found at 281 Iowa Administrative Code 6. Appellants seek reversal of a decision of the board of directors [hereafter "the Board"] of the District made on August 20, 1992, to deny a request by the Audubon Community School District ["Audubon"] to enter into the Exira District for the purpose of transporting open enrollment students to Audubon.[1]

[1]The District questions whether Appellants have standing to appeal this decision when it was the Audubon district that made the request. We hold today in section II of this opinion that the parents of open enrollment students affected directly by the Board's decision are sufficiently "aggrieved" under Iowa Code section 290.1 to have standing to appeal.

I.
FINDINGS OF FACT

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

Appellants are residents of the District whose children are all open enrolled to Audubon. Therefore, in the absence of an agreement between the resident and receiving districts (the subject of this appeal), they are responsible under Iowa's open enrollment law to transport their children to Audubon, either to a point inside the Audubon district already on the bus route or (by choice) all the way to school.

To fulfill that obligation jointly, Appellants have contracted with Western Iowa Transport to drive their children to school.[2] Because the District does not itself offer the appropriate program needed by some resident pupils requiring special education, the District transports in a nine-passenger van at least three special education students to Audubon where they receive their educational program. The "open enrollment bus" (Western Iowa Transport arrangements made by the parents) is often leading or following the District's special education van into Audubon. Paying a company to bus their children in essence alongside a mostly empty District van is a source of some irritation to Appellants and other parents of open enrolled children.

In July of 1992 Audubon school officials formally requested permission to enter into District territory, asking to stop at a central location in Exira for the purpose of bringing a few Audubon open enrollment students into Exira and picking up several District students open enrolled to Audubon. The District Board tabled official action on the request until bus routes were finalized on August 20, at which time the Board declined to permit Audubon's buses to enter the District for open enrollment. ("Wolf moved to deny an Audubon Community school bus from entering our district. Paulsen seconded with all yes." Previous Record, Bd. Mins. of 8/20/92 at p.2.)

At our hearing, Appellants testified that the District, with Board approval, picked up children in three families who were open enrolling *into* the District, and that the pickups were

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[2]Appellants learned that they couldn't "hire" one parent to transport all of the children to school in one vehicle without running afoul of the state law regarding transporting students to school for compensation, and what constitutes a "school bus." See Iowa Code §321.169 (1993).

outside Exira. District Superintendent Otto Faaborg replied that at one time in the 1992-93 school year, he learned that children of one family outside the District were being picked up by a District bus, but as soon as he learned of it he changed the bus route. The other two families mentioned by Appellants in testimony are being picked up *within* the District, as the open enrollment law requires in the absence of an agreement between the two districts, testified Superintendent Faaborg in rebuttal. He remains confident that all District transportation is currently within the law. He also testified that none of the other five or six neighboring districts have approached the Board with a request similar to Audubon's. However, those school districts are not the recipients of forty-four District open enrollment students as Audubon is.

Appellants, in addition to the argument regarding their personal expenditures for transportation and their opinion that the District was treating open enrollment students coming into the District differently from those leaving to attend in Audubon, appealed on the ground that their children's safety should be a consideration. Appellant Mary Lee Jensen stated that the Western Iowa Transport van has to cross three sets of railroad tracks to take the children to Audubon; she and other parents would feel that the children were safer if they were in a yellow school bus. No one augmented this testimony with other safety concerns or specific incidents of hazardous situations.

Although there traditionally is no love lost between Exira and Audubon school districts, Mrs. Jensen testified that the District Board had of late indicated a willingness to work with Audubon. She had hoped that the passage of an amendment to the open enrollment law allowing neighboring districts to enter into agreements for the purpose of busing open enrollment students across district lines would have been utilized by the District Board to exhibit this new spirit of collegiality with Audubon. Needless to say, she and other parents were disappointed that the Board did not take this opportunity.

II.
CONCLUSIONS OF LAW

The threshold legal issue in this appeal is one raised by the Appellee. Superintendent Faaborg questioned whether Appellants have legal standing to appeal, given the fact that the request on which the Board's decision rested came from the Audubon Community School District. Although no administrative law judge has yet been required to rule on the issue, this point was addressed in a prior State Board of Education decision

involving the new open enrollment transportation provision. In dictum, the administrative law judge wrote in a recent decision:

> Technically, [Appellant, a parent,] is not the proper party to approach the District Board. Because the law requires agreement of two school boards, [the receiving district] should have made the request of the Board. [Appellant] would be "aggrieved" by a denial and therefore could appeal, but she should probably have left the request up to [the receiving district].

In re Pam Rohlk, 11 D.o.E. App. Dec. 20, 22 at n.2. (1994). The accepted degree of "aggrievement," as that term is used in Iowa Code section 290.1, is direct and immediate impact from the decision, not being affected indirectly or remotely. In this case, Appellants are the ones, as opposed to the Audubon district or its officials, who are most directly impacted by the District Board's decision. It is the administrative law judge's belief that they, accordingly, are adequately "aggrieved" by the decision and thus have legal standing to challenge it.

On the merits of the case, we must side with the District and Board. While Appellants were understandably encouraged by the Board's prior statements or actions indicating a willingness to overlook some traditional animosity toward Audubon, coupled with the opportunity made available by the 1992 amendment to the open enrollment law,[3] we do not agree that the *possibility* of agreement translates into a *requirement* for agreement. In its history of appeals cases, the State Board of Education has enunciated the principle that it will not overturn a local school board's decision absent proof that the decision was made arbitrarily or capriciously (on a whim or without a rational reason), or that it lacked a basis in law or fact or was beyond the authority of a board to make, or unless it constituted an abuse of discretion. In re Jerry Eaton, 7 D.o.E. App. Dec. 137, 141 (1989).

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[3]Prior to 1992, the open enrollment law contained a prohibition against a receiving district traversing district boundaries for the purpose of transporting open enrollment students. See Iowa Code section 282.18(11)(1991). An amendment changed that blanket prohibition into a limited prohibition; such transportation would be legal if the sending and receiving districts reached mutual agreement that one or both districts would cross lines to pick up and drop off open enrolled students. Id. (West Supp. 1992) and (1993).

With respect to the issue before us today, the State Board has also indicated previously that a school board's decision not to enter into an open enrollment transportation agreement with one or more districts will be reviewed on appeal with considerable respect for the local board's discretion.

> Therefore, it appears to be established State Board precedent that if a school board declines an invitation to enter into an agreement with one or more neighboring districts for the transportation of open enrollment students by the receiving district, and if it has a valid reason for the denial, and if a particular student's safety situation is not serious enough to override the local board's decision, that decision will not be disturbed by the State Board of Education.

In re Bridget and Megan Anderson, 11 D.o.E. App. Dec. 47, 51 (1994).

Appellants have not carried their burden of proof in this case. The only "safety" issue raised is that a yellow school bus would be safer crossing three sets of railroad tracks than the van used by Western Iowa Transport. This was a bare assertion unaccompanied by evidence.

Appellants' other argument, that the District is already sending a nine-passenger vehicle into Audubon with only three students on board (and should therefore transport Appellants' children) must also fail. Would Appellants ask the District Board to transport *only* their children in this van? After all, there are forty-four Exira students traveling to Audubon for school. Obviously a larger bus would be needed if all of the District's open enrolled students were transported along with the three special education students. Is it Appellants' contention that the District should increase its costs in transporting those three special education students by running a full-sized bus? That seems a bit much to ask, even for Appellants who clearly desire the safest means available for their own (and presumably all other) children.

Appellants also offered no counter to the Board's tacit position that allowing Audubon's buses into the District would only encourage further open enrollment at an even greater cost to District coffers. This is not only a possibility but a likelihood. (However, below in our discussion is a reminder to the Board that an agreement could be fashioned that would not encourage further open enrollment.)

The only advice we would offer to the District Board is first that the directors and secretary remember that the Iowa Open Meetings Law exhorts all public bodies to discuss the rationale and basis for all of their decisions in the context of their public meetings and the minutes should reflect the discussion. See Iowa Code section 21.1 (1993). The minutes in this case reflect only the motion, second, and vote. Second, as we pointed out in the first of these open enrollment transportation agreement decisions, it would be possible for a school board to draft an agreement that would either reduce or eliminate additional future open enrollment in reliance on the promise of transportation. In re Russ and Marty Daggett, 11 D.o.E. App. Dec. 15 (1993). This could be done by allowing the receiving district to come into the District to transport only those students who had signed up for open enrollment prior to the date of the transportation agreement. (Of course, problems with this option could arise when younger siblings of already open enrolled students would be left standing in the driveway while older brothers and sisters rode off.) Or, irrespective of the timing of an open enrollment application, agreement with the other district could be conditioned upon a pick-up point for all children desiring transportation at a safe spot just inside the District's boundaries, thus leaving the parents still responsible to convey their children to that predetermined point. Our point is, if a school board is concerned about the impact of a transportation agreement on future open enrollment, an agreement could be crafted that removed this factor. If the issue is a desire not to have multiple buses from other districts riding around within the sending district, an agreement could be crafted that removed this factor.

Therefore, an invitation for agreement on the transportation of open enrollment students need not be a yes or no proposition. By the same token, we respect the discretionary aspect of such a decision and will not, "absent significant safety or other concerns," willy-nilly overturn a local board's decision or force them to enter into a transportation agreement. See In re Russ and Marty Daggett, 11 D.o.E. App. Dec. 15 (1993); In re Pam Rohlk, 11 D.o.E. App. Dec. 20 (1994); and In re Bridget and Megan Anderson, 11 D.o.E. App. Dec. 47 (1994).

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

III.
DECISION

For the reasons stated above, the decision of the board of directors of Exira Community School District made on August 20,

1992, not to enter into an agreement with the Audubon Community School District enabling that district to drive into Exira to transport open enrollment students from Exira to Audubon is hereby recommended for affirmance. There are no costs of this appeal to be assigned under Iowa Code section 290.5.

January 4, 1994
DATE

Kathy Lee Collins
KATHY LEE COLLINS, J.D.
ADMINISTRATIVE LAW JUDGE

It is so ordered.

January 14, 1994
DATE

Ron McGauvran
RON MCGAUVRAN, PRESIDENT
STATE BOARD OF EDUCATION