

IOWA STATE BOARD  
OF EDUCATION  
(Cite as 11 D.o.E. App. Dec. 47)

In re Bridget and Megan Anderson :  
Janice Anderson, :  
Appellant, :  
v. : DECISION  
Lake Mills Community :  
School District, :  
Appellee. : [Admin. Doc. # 3319]

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The above-captioned matter was heard telephonically on March 23 and April 19, 1993, before a hearing panel comprising Jim Tyson and Su McCurdy, consultants, Bureau of School Administration and Accreditation; and Kathy Lee Collins, legal consultant in the Office of the Director and designated administrative law judge, presiding. Appellant Janice Anderson was "present" telephonically, unrepresented by counsel. Appellee Lake Mills Community School District [hereafter, "the District"] was also present by phone in the person of Superintendent Dale Sorensen and, on April 19, 1993, also by Scott Helgeson, director on the school board; the District was not represented by counsel.

An evidentiary hearing was held in accordance with departmental rules found at 281 Iowa Administrative Code 6. Appellant seeks reversal of a decision of the board of directors [hereafter "the Board"] made on December 14, 1992, denying her request that the District Board enter into an agreement with the Forest City Community School District ["Forest City"] for the transportation of open enrollment pupils across district lines.

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.

Appellant is a resident of the District and the mother of two students who are open enrolled to Forest City. Her husband

farms and she works for a bank in Forest City. For the first years of their open enrollment, the Anderson children, Bridget and Megan, have been taken by their parents to their grandparents' home in Forest City where they were then picked up by that district's buses. (Three or four families' homes remain on the route even closer to the District boundary after Bridget and Megan are picked up.) Appellant and her husband are not always able to pick up the girls at their grandparents' residence right away, so Bridget and Megan await their parents' arrival inside. However, the grandparents are now retired and plan to spend some of the winter months away from their home. Appellant is concerned for the girls' safety, stressing that if the District Board would permit the Forest City buses just 1/4 mile into the District, the girls could be transported to and from their own home. At the time of hearing, Bridget was 13 years old and in seventh grade; Megan was an "almost-eight" year old student in second grade.

The District Board denied Appellant's request on December 14, 1992. ("... motion by Scott [Helgeson], second by Steve [Gilbertson] to deny request; motion carried.)<sup>1</sup> One of the Appellant's complaints is that there was no discussion and no rationale given for the vote.<sup>2</sup> Superintendent Sorensen testified that he did not offer a recommendation to the Board on this issue, but his recollection of events was that the Board's primary concern about entering into a reciprocal agreement with other districts for purposes of transporting open enrollment students across district boundaries was "Where would we draw the line?" No board policy existed on the subject.

At the first day of hearing (March 23), no director was present to testify, and Superintendent Sorensen was understandably reluctant to speculate as to the individual directors' reasons for their votes. He did indicate that 14 students were open enrolled out of the District in 1992-93, with a total of 22 to attend outside the District the next year (1993-94); only four students were open enrolling into the District.

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<sup>1</sup>Four Board members were present, but the minutes do not reflect the actual vote. It would be advisable to record the tally (e.g., 4-0, 3-1, 2-2) if not the exact vote of each member.

<sup>2</sup>The Iowa Open Meetings Law's statement of Intent and Declaration of Policy reads as follows: "This chapter seeks to assure ... that the basis and rationale of governmental decisions, as well as those decisions themselves, are easily accessible to the people." Iowa Code §21.1(1993) (emphasis added).

Following the conclusion of testimony and evidence at the telephone hearing on March 23, the administrative law judge wrote the following letter on March 30 to the District:

Dear Superintendent Sorensen:

Enclosed please find a copy of a notice to conclude the telephonic hearing in the Janice Anderson appeal. Some explanation may be in order.

At the close of the hearing on March 23, the hearing panel and I reviewed the evidence and began discussing the resolution of the case. We were troubled by the fact that no board members testified, and you as superintendent had to guess at what the directors had in mind when they made the decision.

Frankly, in prior cases where we have had a similar lack of rationale, the State Board has reversed the local board's decision and remanded (sent it back to the local board) it with direction that the local school board readdress the issue, this time articulating the reasons for their decision in the board minutes. (Of course, the board would also be free to change its mind, which would lead to a dismissal of the case.)

The hearing panel felt that a reversal, followed by a remand, followed by (in all likelihood) the same decision would lead to another appeal, either by Appellant Janice Anderson or another parent who feels "aggrieved" by the decision. (See Iowa Code section 290.1). We decided we could circumvent that entire legalistic and cumbersome process by ordering a continuance with the requirement that one or more board members be "present" to testify by telephone as to the rationale for the decision made in this case.

I am enclosing a copy of a decision in which the State Board found the absence of an articulated reason for a given decision to be tantamount to arbitrariness.

By copy of this letter I am advising Ms. Anderson of the reason for the second day (or "continuation") of the hearing. If either of the parties is not available on April 9, please contact my assistant and request a continuance.

I hope this explanation makes sense and is not too legally technical. It is my goal to reduce the number of steps to resolve this appeal, not to create additional technicalities. Thank you for your cooperation.

Sincerely,

No objections to this procedure were made, so a second hearing date was set for the receipt of testimony from one or more directors for the District. As noted above, Scott Helgeson was "present" by telephone to testify as to his reasons and his recollection of the discussion by the Board in December of 1992.

Mr. Helgeson testified that for his part, "money" was the main reason he voted to deny Appellant's request.<sup>3</sup> He also believes the same concern is held by other directors, although he could not recall the nature of any discussion at the December 14 Board meeting, adding that it was possible there was no discussion. Appellant's request for an agreement with Forest City was not the first time this issue has arisen at a Board meeting. The Board minutes of September 14, 1992, submitted into evidence, show the following:

The Forest City School open enrollment sample policies discussed -- motion by Scott Helgeson, seconded by Pam Divan to continue with the present policy<sup>4</sup> of not allowing contiguous schools into the Lake Mills Community School District to pickup [sic] or deliver students; motion carried.

Appellee's Exhibit 1, Bd. Mins. of 9/14/92.

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<sup>3</sup>We can only assume that the concern about "money" translates into the following hypothesis: "If we allow buses from neighboring districts into our district, it would be more convenient to use open enrollment and more students would open enroll out, thereby costing the district more money." This hypothesis rests on the fact that state aid and property tax designated for the education of each pupil is sent by the pupil's resident district to the selected receiving district when a pupil open enrolls. See Iowa Code §282.18(8)(1991) (lower of the two districts' per pupil cost plus any special weighting money plus Phase III money is sent when a regular education pupil open enrolls).

<sup>4</sup>Apparently there is no written policy, only an unwritten one or past practice.

Mr. Helgeson also testified that there are a number of students who live close to the District borders, and that four other districts touch Lake Mills: Northwood, N.C.-Manley, Forest City, and Thompson. He expressed a safety concern "if we start letting buses go all over the place."

## II. CONCLUSIONS OF LAW

The issue of whether and when, if ever, the State Board of Education will overturn a local school board's decision on the discretionary matter of entering into an agreement with a neighboring school district was addressed in another case involving the Appellee here. See In re Russ and Marty Daggett, 11 D.o.E. App. Dec. 15 (1993). In that case, the State Board affirmed the District Board's authority to say no to an open enrollment transportation agreement, and implied that safety would be the primary, if not the sole, reason for overturning such a denial. Id. at pp. 13-14. However in that case, the administrative law judge also suggested an answer to the question posed by Mr. Sorensen in this case ("Where do you draw the line?"):

We wish to note, however, that the Board could have approved a transportation agreement that would not be likely to have such an effect (by approving transportation for only those students who were released prior to 1993) or one that would have minimized such an effect (by approving transportation for only those students who live within, for example, two miles of the boundary line). The point is, options are available if the board wishes to consider them.

Id. at p.18, 2. Thus, whether or not to enter into an agreement does not have to be a black-white, yes-no issue. Reasonable lines can be drawn, although the State Board also affirmed a local district's right not to enter into such an agreement, so long as the board articulates a plausible and responsible reason.

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.

Applied to the facts of this case, the administrative law judge concludes that the denial by the District Board was based upon a valid concern for the loss of future students under open enrollment; if the responsibility for transportation were to be removed from the parent's shoulders, the numbers of students seeking open enrollment could and probably would increase.<sup>5</sup>

As for the safety factor, Appellant only offered that her daughters might be stranded at their grandparents' home during times when the elder couple was away and Appellant's husband was unable to meet the bus promptly. Our answer to that is to suggest a different drop-off point (perhaps to the home of another student on the bus), obtaining a key to the grandparents' home for use on days when Mr. Anderson would be unable to meet the bus,<sup>6</sup> or to ask a neighbor or friend to pick up the girls on those occasions. Although door-to-door transportation is undoubtedly safer for all students, Iowa law does not require even a resident district to transport all pupils to and from their homes. See Iowa Code §285.1(1)"a" ("Elementary pupils shall be entitled to transportation only if they live more than two miles from the school [in their resident district] designated for attendance; high school pupils shall be entitled . . . only if they live more than three miles from the school . . .") and subsection (2) ("Any pupil may be required to meet a school bus on the approved route a distance of not to exceed three-fourths of a mile . . .").

Having found an insufficient basis upon which to overturn the decision, the denial will be recommended for affirmance by the State Board.

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

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<sup>5</sup>The same result might not occur if the district denying the agreement were receiving significantly more pupils than it was losing under open enrollment. That is not the case here; the District suffered a net loss of 18 students for 1993-94.

<sup>6</sup>Bridget would be a fourteen year-old eighth grader this year who, barring unusual circumstances unknown to us, should be of a responsible enough age to carry a key to her grandparents' house and use it to have a safe, temporary haven for herself and her sister until their parent arrived.

III.  
DECISION

For the reasons stated above, the decision of the Lake Mills Community School District board of directors made on December 14, 1992, denying Appellant's request that the Board enter into an agreement with the Forest City schools for the transportation of open enrollment students is hereby recommended for affirmance. There are no costs of this appeal to be assigned.

December 30, 1993  
DATE

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

It is so ordered.

1-14-93  
DATE

Ron McGauvran  
RON MCGAUVRAN, PRESIDENT  
STATE BOARD OF EDUCATION