IOWA STATE BOARD
OF EDUCATION
(Cite as 11 D.o.E. App. Dec. 20)

In re Pam Rohlk	:	
Pam Rohlk, Appellant,	:	
v.	:	DECISION
Eastwood Community School District, Appellee.	:	[Admin. Doc. # 3227]

The above-captioned matter was heard telephonically on April 2, 1993, before a hearing panel comprising Lee Crawford, consultant, Bureau of Vocational and Technical Education; Lyle Wilharm, assistant chief, Bureau of Food and Nutrition; and Kathy Lee Collins, legal consultant and designated administrative law judge by the director of education. Appellant Pam Rohlk was present by telephone, unrepresented by counsel. Appellee Eastwood Community School District [hereafter, "the District"] was also present by telephone in the person of Superintendent Richard H. Caldwell.

An evidentiary hearing was held pursuant to departmental rules found at 281 Iowa Administrative Code 6. Authority and jurisdiction for the appeal are found in Iowa Code chapter 290. Appellant seeks reversal of a decision of the District's board of directors ["the Board"] made on September 21, 1992, denying her request that the Galva-Holstein Community School District ["Galva-Holstein"] be allowed to send its buses into the District to pick up and drop off District students who are open enrolled to Galva-Holstein.[1]

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 the appeal before them.

Appellants are the parents of Sheena and Justin, who were in first grade and kindergarten last year, respectively. Brad Rohlk farms and Pam works outside the home in Holstein, leaving at

[1]The Board's action was to initiate a policy not to allow buses from other school districts into the District if the purpose was to transport open enrollment students. There was no action specifically on Appellant's request.

7:30 a.m. and returning at 5:30 p.m. Sheena and Justin are open enrolled to Galva-Holstein for school, and their parents transport them a quarter of a mile into that district to be picked up by the Galva-Holstein school bus. Brad would pick up Justin at 12:30 after his kindergarten morning, and then return to pick up Sheena at 4:30.

This arrangement, although inconvenient and time-consuming for the Rohlks, was the only option for transportation until the legislature amended the open enrollment law in the 1992 session liberalizing the previous restrictions on a receiving district transporting open enrollment students. The new provision would allow open enrollment students to be picked up in their resident district by the receiving district if the two districts' school boards come to mutual agreement on the issue.

Pam Rohlk approached the District Board first in August of 1992 asking the directors if they would enter into an agreement with Galva-Holstein for open enrollment transportation. The Board tabled the request until its September meeting when they denied her request by initiating a policy "that neighboring districts can't send buses into our district." Prev. Record, Bd. mins of 9/21/92 at p. 3. The policy was officially adopted on October 20 with a second reading and formal, final approval. Policy #702.7, Appellee's Exhibit A. This appeal followed.

Appellant asks the State Board to overturn this decision because "children's safety should be more important than egos." She is concerned about the children's waiting at the stop for Brad to pick them up, citing the potential for injuries, abduction, and health concerns due to inclement weather. She also stated that the family cannot afford child care, which would relieve them of the three daily trips to the bus stop.

II.
CONCLUSIONS OF LAW

Mrs. Rohlk and the District are both correct in their understanding of this newer provision of Iowa's open enrollment law. It is a relaxation of the once-rigid ban to a receiving district's transporting open enrollment students. While we cannot know with confidence why the legislature began open enrollment with the requirement that parents assume the responsibility for transporting their open enrolled children, we assume that their reasons were at least two-fold: one, so that in fairness, a parental choice to open enroll to another district would carry some consequence for leaving the district ("with greater freedom comes greater responsibility") and two, to protect resident districts so that potential receiving districts would not use transportation to "recruit" children and youth to open enroll.

By the same token, we can only guess that the reason the legislature then amended the transportation ban was in recognition of the fact that in many cases both sending and receiving districts were amenable to transporting open enrollment students. Why, then, should the legislature stand in the way of safer circumstances for many children?

The key element is, of course, mutual agreement. That does not exist in this case, although it would seem likely that the Galva-Holstein district is willing to enter into such an agreement.[2] In the absence of such, and in the absence of circumstances where an exception might be called for, Appellant asks the State Board to *force* the District to enter into this agreement. This the State Board members have been disinclined to do. See, e.g., In re Russ and Marty Daggett, 11 D.o.E. App. Dec. 15 (1993). In the Daggett case, the State Board approved of the administrative law judge's suggestions that local boards consider in deciding whether and even to what extent they might agree to transportation of open enrollment students. Daggett, supra at p. 18 fn 2. Nevertheless, we also recognized a local board's right to refuse to enter such agreements because making open enrollment easier and more desirable does have or at least can have a negative financial impact on a sending district.

In this case, as in Daggett, the administrative law judge has not been presented with facts that would justify a reversal of the District Board's decision. Most of Appellant's safety concerns are based upon a fear or mere speculation of what *could* happen, not what is likely to happen.

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

III.
DECISION

For the foregoing reasons, the decision of the board of directors of the Eastwood Community School District denying Pam Rohlk's request to enter into an agreement with the Galva-Holstein board of directors for the transportation of open enrollment pupils across district lines is hereby recommended for affirmance.

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[2]Technically, Mrs. Rohlk is not the proper party to approach the District Board. Because the law requires agreement of two school boards, Galva-Holstein should have made the request of the Board. Mrs. Rohlk would be "aggrieved" by a denial and therefore could appeal, but she should probably have left the request up to Galva-Holstein.

There are no costs of this appeal to be assigned under Iowa Code Chapter 290.

December 21, 1993
DATE

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

It is so ordered.

1-14-94
DATE

Ron M. McGauvran
RON MCGAUVRAN, PRESIDENT
STATE BOARD OF EDUCATION