IOWA STATE BOARD
OF EDUCATION
(Cite as 11 D.o.E. App. Dec. 15)

In re Russ and Marty Daggett	:	
Mr. and Mrs. Russ Daggett, Appellants,	:	
v.	:	DECISION
Lake Mills Community School District, Appellee.	:	[Admin. Doc. # 3331]

The above-captioned matter was heard telephonically on April 14, 1993, before a hearing panel comprising Dr. David Alvord, consultant, Bureau of Planning, Research and Evaluation; Mr. Terry Voy, consultant, Bureau of School Administration and Accreditation; and Kathy Lee Collins, legal consultant and designated administrative law judge by the director of education. Appellant Marty Daggett was present by telephone, unrepresented by counsel. Appellee Lake Mills Community School District [hereafter, "the District"] was also present by telephone in the person of Superintendent Dale Sorensen, also *pro se*.

An evidentiary hearing was held pursuant to rules of the department of education found at 281 Iowa Administrative Code 6. Authority and jurisdiction for the appeal are found in Iowa Code chapter 290. Appellants seek reversal of a decision of the board of directors ["the Board"] made on January 11, 1993, to deny Appellants' request that the Forest City Community School District ["Forest City"] school bus be permitted to enter the District for the purposes of transporting Appellants' children who attend in Forest City under open enrollment.

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 Sarah and Emily, who were in eighth and fifth grades respectively at the time of this appeal.

The girls have attended the Forest City schools under open enrollment since the law took effect. Appellants have been transporting Sarah and Emily to a school bus stop inside the Forest City boundary, approximately two miles from their home.

On one or two occasions over the past four years, the family have had some difficulty getting to the bus stop site. Once the car became stuck in the snow and they could not get to the girls after school to pick them up at the stop. Appellants' Affidavit of Appeal. On another occasion, one or both of the girls forgot that they would be picked up by their parents at school, rode the bus to the stop, and then had to walk the two miles home. Id. Appellants are, of course, concerned for the safety of their children.

In January, Appellants asked both the Board and the Forest City school board to consider the proposition that the Forest City bus be allowed to enter the District to pick up Sarah and Emily. The Forest City school board approved the request; the District Board denied the request, apparently without discussion.[1] At hearing, Mrs. Daggett indicated that she understood that the Board had the legal right to deny her request; rather, she was hoping for an explanation of the Board's reasoning or rationale.

II.
CONCLUSIONS OF LAW

When the General Assembly initially passed the current open enrollment law, included was a relatively strong statement regarding transportation:

> Notwithstanding section 285.1 relating to transportation of non-resident pupils, the parent or guardian [of an open enrollment student] is responsible for transporting the pupil without reimbursement to and from a point on a regular school bus route of the receiving district. A receiving district shall not send school vehicles into the district of residence of the pupil . . . for the purpose of transporting the pupil to and from school in the receiving district.

Iowa Code §282.18(11)(1991).

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[1]The Board minutes of the January 11 meeting show only the request, a motion and second to deny the request, and a statement that the "motion carried." Prev. Record, Bd. mins. of 1/11/93.

In 1992, the legislature amended the portion of the open enrollment law quoted above to allow districts, *by mutual agreement of both boards*, to transport students from their home to school in the receiving district. Id. (1993). Clearly, the decision to enter into such an agreement is a discretionary one; the law gives school boards this option but does not require it.

Mrs. Daggett understands this and, presumably, the heavy burden she carries in an appeal attempting to overturn a school board's discretionary decision. The State Board has often repeated that it is not free to reverse the action of a local school board "absent proof that it was made arbitrarily, capriciously, without basis in fact, upon error of law, without legal authority, or unless it constitutes an abuse of discretion." In Jerry Eaton, 7 D.o.E. App. Dec. 137, 141 (1989). We are sympathetic to Appellants' concern. Although there is no legal basis upon which the State Board should reverse this decision, Appellants and all constituents of public bodies have a reasonable expectation that their school board's decisions be based upon an articulable reason. In fact, the Iowa open meetings law, violations of which the State Board of Education is powerless to enforce, include a "declaration of policy" that reads as follows:

> This chapter seeks to assure, through a requirement of open meetings of governmental bodies, *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). Public school boards are, of course, subject to this chapter and its declaration of policy. Directors would be wise to remember it and perform to its expectations. While it may not be possible to have a majority of directors agree on a reason for a given decision, if the board secretary dutifully records the discussion, people who were not in attendance at a meeting have access to the nature of the comments made through the printed minutes of the meeting. If, on the other hand, there is no discussion of an item, the people in attendance and those reading the minutes may well infer one of a number of possibilities: the subject was discussed prior to the meeting in (arguable) violation of the open meetings law; there was no reason for the decision, thus giving rise to an allegation that the decision was made arbitrarily or on a whim; the subject has come up before and the board is merely maintaining consistency in its practice. There may be other options as well.

In this case, at hearing Superintendent Sorensen testified that the denial of Appellants' request was consistent with its past practice of not allowing school buses from neighboring

districts into the District to transport open enrollment pupils. This is a valid reason for the denial, but the hearing panel wonder whether this answers Appellant's question, "Why aren't those buses allowed in?"

If the directors were being forthright, they might have discussed a concern that granting Forest City buses the right to enter the District to transport open enrollment students could have the undesirable effect of increasing the number of students who elect to leave the District under open enrollment. In other words, the Board could perceive that an agreement with Forest City would have a negative fiscal impact on its District. This would be or could be under most circumstances a valid reason for denying the request.[2]

Does fiscal responsibility outweigh a child's safety? The answer to that question depends upon both the nature of the safety concern and the degree of financial impact. Frankly, while we agree with Appellant that her daughters' safety would be greater assured if they were picked up and dropped off at home, she did not testify to safety factors of a magnitude or degree that alarmed the hearing panel. This is not a matter of extraordinarily dangerous roads or an unsafe bus stop site. Had those conditions existed, as opposed to the conditions and incidents involving the family car getting stuck and the girls not remembering to wait at school for their parents on a given day, we might have asked the State Board to remand this case to the District Board for a more thorough examination of the safety of Sarah and Emily. However, the facts of this case do not beg a reconsideration order by the State Board.

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 Lake Mills Community School District made on

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[2]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 only for 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.

January 11, 1993, not to enter into a transportation agreement with the Forest City Community School District board is hereby recommended for affirmance. There are no costs of the appeal to be assigned.

November 17, 1993
DATE

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

It is so ordered. The State Board of Education respectfully requests that the Lakes Mills Community School District board of directors issue a written explanation of its decision to Appellants in this case.

12/10/93
DATE

Ron McGauvran
RON MCGAUVRAN, PRESIDENT
STATE BOARD OF EDUCATION