

DEPARTMENT OF EDUCATION
(Cite as 9 D.o.E. App. Dec. 245)

In re Carol and Timothy O'Brien :
Carol and Timothy O'Brien, :
Appellants, :
v. : DECISION
Arrowhead Area Education :
Agency (V); :
Stratford Community School District, :
Real Party in Interest, :
Intervenor. : Admin. Doc. #3166]

The above-captioned matter was heard on February 5, 1992, by conference call emanating from the department of education, before a hearing panel comprising Edie Eckles, consultant, Bureau of School Administration and Accreditation; Diane Schnelker, chief, Bureau of Planning, Research and Evaluation; and Kathy L. Collins, J.D., legal consultant and designated administrative law judge, presiding. Appellants were telephonically present in the offices of their attorney representative, Mr. Leonard R. Holland, Dayton. Appellee Arrowhead Area Education Agency (hereafter "AEA") was represented by Mr. Dean Erb. Stratford Community School District (hereafter "Stratford" or "the District") was telephonically present in the persons of Superintendent Wayne Larson and President Rick Woodard of the Stratford board of directors (hereafter "the Board") and was represented by Mr. Lloyd Courter of Courter, Quinn, Doran & Anderson, Boone.

A stipulated, on-the-record hearing¹ was held pursuant to departmental regulations found at 281 Iowa Administrative Code 6. Appellants seek reversal of a decision of the AEA board of directors made on January 9, 1992, affirming a decision of the Stratford Board made on November 13, 1991, denying Appellants' children the option of riding the school bus to St. Thomas Aquinas School in Webster City in favor of reimbursing Appellants for providing the transportation themselves.

Upon the sua sponte motion of the administrative law judge following the hearing, a limited rehearing was held on April 30, 1992, solely on the issue of whether or not the adoption of the policy in question by the Stratford Board was arbitrary and capricious. The limited rehearing was also held by conference call. Counsel for Appellants, for Stratford, and for the AEA participated, and testimony was given by Board President Rick Woodard.

Authority and jurisdiction for the appeal are found at Iowa Code section 285.12 (1991).

¹ By stipulation, the record in the first hearing was augmented by an affidavit of Superintendent Larson, Appellee's Exhibit I. The rehearing was evidentiary in nature.

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 this appeal.

In August, 1991, Appellants moved to Stratford with their four children: Cedar, a ninth grader; Willy, a seventh grader; Molly, a third grader; and Seamus, a first grade student. All four were initially enrolled in the District. In October, Appellants transferred their two youngest children to St. Thomas Aquinas, a parochial school in neighboring Webster City.

The District is involved in a sharing agreement pursuant to Iowa Code sections 282.10-.12 with Webster City whereby Stratford resident students in grades 7-12 are sent to Webster City public school. The District runs a school bus from Stratford to Webster City to transport its secondary resident students to Webster City. Appellants' two older children are transported in this way.

Appellants requested in November that their two youngest children be permitted to ride the bus to Webster City where they would walk less than a block from the public school in Webster City, where children are dropped off, to St. Thomas Aquinas School. The District Board denied Appellants' request on the basis of its policy regarding transportation of nonpublic school students. Under the policy, although Appellants are not eligible for direct transportation, they are eligible for reimbursement for transporting Molly and Seamus to Webster City, which Appellant Carol O'Brien does daily, following the District's bus all the way to its destination.

The policy regarding the transportation of resident students to non-District schools reads as follows:

Transportation on school vehicles shall not be provided to any K-6 resident student desiring to attend classes in Webster City as long as those classes are available in Stratford. Parents may transport such students and be reimbursed at the current state funded rate upon request for such reimbursement.

Affidavit of Appeal (Stipulated), page 2.

On rehearing, Board President Woodard testified that the policy quoted above was formally adopted by the Board on July 10, 1991.² Prior to its adoption, the District had practiced the reimbursement option for its resident students who attended private schools. The basis for this policy decision, according to President Woodard, stemmed from Superintendent Larson's recommendation and a belief that the District's educational programs are sufficient to meet the needs of all resident children; the

² This was prior to Appellants' relocation in the District and clearly preceded their October or November decision to send Molly and Seamus to St. Thomas Aquinas.

Board did not wish to encourage Stratford students to attend nonpublic or other public schools outside the District and felt that directly providing transportation might make it easier for students to leave. Mr. Woodward was aware that some parents of elementary pupils had expressed a desire to attend in Webster City in the recent past, for various reasons.

Transportation for Stratford 7-12 resident students attending school pursuant to the sharing agreement who live south of the Boone River is the District's responsibility. Any secondary pupils living north of the Boone River are transported by Webster City under a "mutual agreement" clause of the sharing contract. Exhibit I, affidavit of District Superintendent Wayne Larson, at p. 3.

Two students ("McBrides") residing in Stratford and living north of the Boone River attend in Webster City as open enrollment students. They have been transported by Webster City. Subsequently, one of them transferred to St. Thomas Aquinas, *id.* at p. 4, but continues to be transported by Webster City. This student is in the same class as Molly O'Brien.

Students of all grades in the District requiring special education are educated in Webster City as the District offers no special education programs.

Appellants have drawn our attention to at least one special education elementary student who is transported to Webster City by the District, and the third grade McBride student who is a resident of the District and transported to Webster City to attend at St. Thomas Aquinas. Although acknowledging the McBride child is transported by Webster City,³ Appellants nevertheless view this transportation as a violation of the District's transportation policy that has gone uncorrected. Appellants pointed to the transportation of the elementary special education student and the McBride child as examples of the District transporting resident students to elementary programs in Webster City.

II.

Conclusions of Law

Appellants have asked the Director of Education to reverse the District and AEA boards' decisions in this matter on the grounds that the District policy is in violation of Iowa law, specifically provisions in Iowa Code chapter 285; that the Board's policy unconstitutionally discriminates against Appellants' children in violation of the Equal Protection clause of the Fourteenth Amendment to the United States Constitution; and that the adoption of the transportation policy constituted arbitrary and capricious action, which is a proper ground for reversal. The panel disagrees with Appellants and accordingly recommends affirmance of the AEA and District decisions.

Violation of Iowa Law

Appellants contend that Iowa law requires transportation of nonpublic school students "on the same basis" as public school students, citing Iowa

³ The District had not filed any nonpublic transportation claims for fall 1991.

Code section 285.1(14). Before we decide what that means, it is appropriate to examine briefly the statutory scheme for transportation of school pupils as laid out in Iowa Code chapter 285.

Public schools are responsible to "provide transportation, either directly or by reimbursement" for all resident pupils attending public schools who are "entitled." Iowa Code §285.1(1)(1991)(emphasis added). Entitlement is defined as living more than two miles from school (for elementary pupils) and more than three miles from school (for high school pupils). Id. Local school boards may transport children not entitled. Id. "Resident pupils attending a nonpublic school either within or without the school district of the pupil's residence shall be entitled to transportation on the same basis as provided for resident public school pupils" Id. at subsection (14)(emphasis added).

"If the nonpublic school designated for attendance (by the parents of the nonpublic school pupils, id.) is located outside the boundary line of the school district of the pupil's residence" the school district may provide transportation for the nonpublic school student who is entitled to transportation in one of four ways: transporting directly, contracting with a private contractor to fulfill its obligation, reimbursing the parents for transportation as provided by law, or contracting with the nonpublic school where the child attends. Id. at subsections (17)(a), (b), (c), and (d). If the district directly provides transportation itself, it may accomplish that in one of several ways respecting district boundary lines. Id. at subsections (16)(a), (b), and (c).

School districts, in establishing school bus routes, are required to set routes "for the economic and efficient operation thereof." Id. at §285.10(2).

Appellants, although acknowledging the discretion statutorily given to school boards under section 285.1(17), nevertheless argue that the District's obligation to Appellants' children is for direct transportation because that is the only way it can meet its obligation under subsection 285.1(14) "on the same basis." Appellants' reliance on this language is misplaced. Subsection 14 of section 285.1 provides that pupil entitlement is the same for nonpublic and public school pupils; that is, high school students who live more than three miles and elementary students who live more than two miles from their designated attendance centers are entitled to transportation.

As to the directive that school routes be set for efficiency and economy, Appellants contend that there is space on the bus and to transport Molly and Seamus directly is less expensive than to provide parental reimbursement. Therefore, for economical efficiency if nothing else, the District should provide direct transportation. This argument erroneously relies on the belief that the District pays for nonpublic transportation. This is not the case. The State pays all reimbursement claims. Iowa Code §285.2 (third and fourth unnumbered paragraphs). Moreover, this argument ignores two other factors: the decision as to which method of transportation is used rests with the District, and Appellants' children would be entitled to transportation from their home or at least no more than three-fourths of a mile from home. This could entail altering the bus routes. Finally, as is so often the case, Appellants also fail to realize that changing Board policy would affect more than just the O'Brien children. Any other Stratford students who

attend nonpublic schools would then be entitled to direct transportation, including the potential for further alteration of bus routes.

Clearly the law allows the District to select an option from those enumerated in Iowa Code sections 285.1(16) and (17). The primary basis upon which we would overturn that legally authorized, discretionary decision is if it were made arbitrarily or capriciously. In re C. Donald MacCormack III, 5 D.o.E. App. Dec. 1 (1986). To determine whether or not the policy decision was made arbitrarily was the purpose of the rehearing.

Board President Woodard testified at rehearing that Superintendent Larson's oral recommendation for Board policy on out-of-district transportation was for reimbursement rather than direct transportation or contracting with either a private carrier or the nonpublic schools in Webster City or Fort Dodge where Stratford resident children have attended or currently attend. The expressed rationale was to make it less convenient for children to attend nonpublic schools and to be consistent with its past practice not to provide direct transportation to other districts' public schools for Stratford resident children.

While such a view may not be the most magnanimous or accommodating one for students and their families who exercise their option to attend school elsewhere than their resident district, the basis articulated for the policy is not without reason (and is therefore not "arbitrary") nor does it constitute an abuse of discretion. See Mathis v. State Conservation Com'n, 369 N.W.2d 435, 437, (Iowa 1985); McClure v. Iowa Real Estate Com'n, 356 N.W.2d 594, 597 (Iowa 1984)(citations omitted).

Violation of Board Policy

Appellants believe that because their children are receiving classroom instruction in religion at St. Thomas Aquinas, and because that instruction is not available at Stratford, it follows that the District's transportation policy does not operate to exclude them. Again, the transportation policy states, in part, "Transportation on school vehicles shall not be provided to any K-6 resident student desiring to attend classes in Webster City as long as those classes are available in Stratford." Appellee's Exhibit B (attached to Board Minutes of Special Meeting of October 25, 1991).

The District does not read or interpret the term "classes" in its own policy to include religious courses. According to the testimony of Board President Woodard, the policy affects resident elementary pupils who would seek open enrollment to Webster City as well as resident elementary pupils who attend a nonpublic school in Webster City; it is designed to impose an additional consideration in the minds of those students and parents who might be thinking of transferring or open enrolling. Transportation will be provided by reimbursement.

Perhaps it is not drafted in the most artful way possible, but our job on review is not to substitute our interpretation of this Board's policy for its own interpretation. See Board of Educ. v. McCluskey, ___ U.S. ___, ___, 102 S.Ct. 3469, 3472 (1982).

Constitutionality of the Board Policy

Appellants also believe that denial of direct transportation to their children is a violation of equal protection. Without any evidence in the record that Appellants are members of any class whatsoever, let alone a protected class,⁴ we can make short shrift of this argument. If the Board's policy negates direct transportation of resident children to either out-of-district public or nonpublic schools, no "different treatment" has been proven. There is no merit in the equal protection argument as it pertains to the Board's policy. If an argument is made that Iowa Code subsections 285.1(14) and (17) operate to deny equal protection to pupils enrolled in nonpublic schools, this case and this forum are not the appropriate vehicles to resolve it.

In summary, the panel finds no basis upon which to reverse the Board's or the AEA's decisions. While it may seem ridiculous (as it no doubt does to Appellants) that Carol O'Brien must drive daily literally following the bus from the District to Webster City while there are seats available, appearances are not at issue. The issue is whether the Board was within its authority and has sufficient reason to have chosen the reimbursement method for fulfilling its obligation to transport eligible resident pupils who attend a nonpublic school outside the District. We believe it has the clear authority and reasoning to support its decision.

Appellants would be advised to remember that they are not the only residents of the District whose children attend nonpublic or non-District schools. When a school board makes policy decisions, it makes them for all who fall under its jurisdiction.

The balance of Appellants' claims are without merit. Any motions or objections not previously ruled upon are hereby denied and overruled.

III Decision

For the foregoing reasons, the decision of the Arrowhead Area Education Agency board of directors made on January 9, 1992, affirming the decision of the Stratford Community School District board of directors made on November 13, 1991, to deny the provision of direct transportation of Seamus and Molly O'Brien to Webster City, St. Thomas Aquinas School, is hereby affirmed. Costs of this appeal, if any, are assigned to Appellants under Iowa Code section 290.5.

May 26, 1992
DATE

Kathy L. Collins
KATHY L. COLLINS, J.D.
LEGAL CONSULTANT AND DESIGNATED ADMINISTRATIVE LAW JUDGE

It is so ordered.

5-28-92
DATE

William L. Lepley
WILLIAM L. LEPLEY, Ed.D.
DIRECTOR

⁴ We do not assume that merely because two of Appellants' children attend St. Thomas Aquinas, that they are Catholic. Protestants and other non-Catholics often attend parochial schools for other reasons.