

**IOWA DEPARTMENT OF EDUCATION
(Cite as 27 D.o.E. App. Dec. 742)**

<i>In re Discretionary Busing/Transportation</i>)	
)	
Iowa City Community School District,)	
)	DECISION
Appellant,)	
)	
v.)	
)	
David and Heather Bright,)	Admin. Doc. No. 5041
)	
Appellee.)	

STATEMENT OF THE CASE

The above captioned matter was heard telephonically on June 28, 2016, before designated administrative law judge Nicole M. Proesch. The Appellant, the Iowa City Community School District (“ICCSD”), was present and represented by attorneys Crystal Raiber and Joseph Holland. Also present for ICCSD was Superintendent Steve Murley (Superintendent Murley), Chief Financial Officer Craig Hansel (“CFO Hansel”), Joan Vandenberg (“Mrs. Vandenberg”), and Transportation Manager Esme Davis (“Ms. Davis”). The Appellee, David Bright (“Mr. Bright”) was present and is an attorney representing himself.

An evidentiary hearing was held pursuant to agency rules found at 281 Iowa Administrative Code chapter 6. Authority and jurisdiction for the appeal are found in Iowa Code section 285.12. The administrative law judge finds that she and the Director of the Department of Education (“the Department”) have jurisdiction over the parties and subject matter of the appeal before them.

ICCSD seeks reversal of the decision of the Board of Directors of the Grant Wood Area Education Agency (“GWAEA Board”) made on June 27, 2016, reversing the April 12, 2016, decision of the ICCSD Board of Directors (“ICCSD Board”), which denied discretionary busing to the Appellee’s children. We reverse the decision of GWAEA Board, finding an error of law, and affirm the decision of the ICCSD Board denying discretionary busing to the Appellees.

FINDINGS OF FACT

The record reflects the following facts:

David and Heather Bright are the parents of three children that attend school in the ICCSD. The Bright’s home is located in Iowa City, Iowa, on Linder Road, north of interstate 80, east of Dubuque Street, and west of Prairie Du Chien Road. Their residence is near the Shimek Elementary School (“Shimek”), which is the designated attendance center for their two younger children. Their residence is 1.64 miles from Shimek. Two of the Bright’s children received

discretionary busing in the 2015-2016 school year. On January 26, 2016, the ICCSD Board voted to remove discretionary busing for over 657 families in the district, including the appellees' children.

Proceedings before ICCSD Board

Prior to the January 26, 2016, decision of the ICCSD Board to end discretionary busing, the board had met and discussed transportation and discretionary busing on numerous occasions because of the significant costs of transportation that comes from the school district's general fund. The discussion began as far back as March 25, 2015. In August of 2015, after the opening of Alexander Elementary School, the ICCSD Board recognized that socio-economic factors and safety concerns needed to be considered when allocating resources for discretionary busing. The ICCSD Board formed a committee to review the issues. The committee, which was comprised of community members, student and family advocates, ICCSD Staff, and a Board member met seven times between August 2015 and January 2016. A Transportation Proposal was put together by the committee for the school district. The goal of the committee was to increase attendance and academic achievement by providing support to students with barriers to transportation. As part of the committee's review, they discussed the transportation budget, the need for ongoing review, discretionary and pay-to-ride busing, and a needs assessment based on attendance data. The committee was tasked with reviewing attendance barriers and thus did not review safety criteria.

To accomplish their goals of increased attendance, the committee made the following recommendations to the ICCSD Board in its proposal which was reviewed by the ICCSD Board at the January 26, 2016 meeting:

1. Maintain busing in areas that are experiencing socio-economic barriers to transportation and those areas in need because of safety concerns.¹
2. Increase access to bus transportation for families with socioeconomic barriers to transportation who live between one or two miles from their elementary school.
3. School bus transportation will be an option for families in extreme circumstances who live less than one mile from their school.

The estimated costs to provide busing for the three routes the committee recommended keeping was estimated to be \$139,224.00 from the general fund. After reviewing the recommendations of the committee, the ICCSD Board voted 7-0 first to remove discretionary busing for nearly 1700 families in the district to include the appellees' children. Then the Board voted 7-0 to add back discretionary busing for about half of those children who face socio-economic and attendance barriers in getting to school. The pay-to-ride system was then made available to those families who were not given discretionary transportation for \$195.00 per student per trimester, with each additional child costing \$97.00 per trimester. Costs are reduced for those who qualify for fee waivers.

On February 4, 2016, the Bright family, along with the other families in the ICCSD, received a letter from the ICCSD stating that the ICCSD Board decided on January 26, 2016, to

¹ The proposal had an attached list of those that would continue to receive busing and those that would not.

remove discretionary busing services for their children for the 2016-2017 school year. The letter included the right to appeal the decision of the Board to ICCSD administrators by notifying Ms. Davis within 10 business days of receiving the letter. On February 17, 2016, the Brights appealed this decision to the ICCSD Board by email.² On February 19, 2016, notice was sent out to the parties that a hearing on the appeals would be held on February 23, 2016, before the ICCSD Board.

At the February 23, 2016, board meeting the ICCSD Board heard 23 verbal statements from parents and a statement from administration regarding the discontinuation of discretionary busing. Mrs. Bright provided a statement to the ICCSD Board that there is no safe route for their children to walk to Shimek and provided examples to support this. The board voted to delay action on the issue to allow the Transportation Department an opportunity to review entry points within the bus routing system and to put together an appeal form. The hearing date was rescheduled to April 12, 2016.

On April 12, 2016, at the hearing, the ICCSD Board heard a statement from a parent and a statement from administration. Then the ICCSD Board entertained a motion to deny all transportation complaints and appeals. The ICCSD Board voted 7-0 in favor of the motion. On April 21, 2016, the Brights filed a timely appeal of this decision with the GWAEA Board.

Proceedings before GWAEA

On May 11, 2016, a hearing was held before the GWAEA Board. The GWAEA Board received evidence and arguments from the parties. The Brights argued that the ICCSD Board abused its discretion by not providing busing for students along a route that is unsafe. In support of this, Mr. Bright testified that there is no safe route for the children to walk to school because there are significant portions of Linder Road and Dubuque Street that do not have sidewalks or cross walks for students to walk on. Linder Road is a winding road with trees and ravines on either side and Dubuque Street has several uncontrolled intersections that make it unsafe for young children to walk. The ICCSD Board argued it did not abuse its discretion when it eliminated discretionary busing for the Appellees.

The Brights also challenged the issue of whether or not they were in the discretionary busing zone and not the mandatory busing zone. The ICCSD argued that the Brights were not entitled to mandatory transportation and were thus, in the discretionary busing attendance zones.

The GWAEA Board, by a motion and an affirmative vote of 5-1, with 2 abstaining, concluded that the Brights were not in the mandatory busing zone and thus, discretionary busing would apply. The GWAEA Board by motion and affirmative vote of 5-2, with 1 abstaining, concluded that ICCSD Board abused its discretion by eliminating discretionary busing for the Brights.

The written decision states, in relevant part:

² Twenty-two other families also filed a notice of appeal.

7. The Board concludes that the District abused its discretion in denying busing to the two Bright children. The decision by the District was an unreasonable exercise of discretion simply because under its method of analysis in view of its incorrect statements of Iowa law, it really didn't exercise any discretion. It totally failed to present any evidence that it analyzed safety issues raised by the Brights along route one before simply denying busing. This method of decision making is completely in contrast to the discretion exercised by the Sioux City School District. The Iowa Supreme Court noted that evidence was presented that the sidewalks at issue were in compliance with applicable laws and ordinances, a special committee was appointed to study the area and make recommendations (the committee included City Public Officials, police department officers, a sheriff's department member, two principals, the assistant superintendent, the district transportation supervisor, the district director of operation and maintenance and the district safety manager). The committee met and discussed the route at issue, the committee actually inspected the route, examined the traffic volume and patterns and consulted experts. They considered alternatives to busing to provide a safer walking route. They compared the route at issue to routes other students walked. They considered the speed and flow of traffic. They examined maintenance of the area, including snow removal. Modifications were made. In short, the School District "did not make a denial of the parents' request without first exploring the situation." The School District "made an informed decision."

In contrast, in Iowa City, the District presented nothing at the hearing even remotely similar to such an analysis of safety issues. At most, the District fed data into its computer system for routes and recognized theoretical possibility that some bus driver for its subcontracting bus company might have driven the route. But it was unaware of any comments made by the driver in relation to pedestrian safety of route one. The District "Transportation Proposal" recommendation #1, encouraged maintain busing to "those areas in need because of safety concerns" but the school rejected it. At the hearing, the District presented no evidence if or how it considered safety concerns raised by the Brights. The Board is well aware of the reduced level of scrutiny required by the abuse of discretion standard of review - but it must insist that there is at least some discretion exercised on the safety issues presented by the Brights: "A failure to exercise discretion is an abuse of discretion. *Sullivan v. Chicago & N.W. Transp. Co.*, 326 N.W.2d 320, 328 (Iowa 1982)." *IBP, Inc. v. Al-Gharib*, 604 N.W.2d 621, 631 (Iowa 2000).

(GWAEA's Findings of Fact, Conclusions of Law, and Decision, Pages 9-10).

1. Based on the evidence presented to it and considering standards for review for transportation disputes between school districts and their patrons, the Board concludes the Iowa City Community School District Board of Director's decision to end transportation of the children of the appellants was discretionary, but it as an abuse of discretion.

2. Following the hearing and consideration of all the evidence presented, Grant Wood Area Education Agency Board of Directors reverses the April 12, 2016 decision of the Iowa City Community School District Board of Directors to deny discretionary busing to the Brights.

(*Id.* at 10-11).

On May 18, 2016, Mr. Hansel filed a timely notice of appeal.

Proceedings before the Department

At the appeal hearing before the Department, the Appellant argued that the ICCSD Board did not abuse its discretion when it denied discretionary transportation to the Brights. The Appellant also argued that there was a conflict of interest on the GWAEA Board because the decision of the GWAEA Board was written by an attorney who works in the same law firm as the Appellee in this matter, David J. Bright, and that this has created an impermissible conflict of interest that was not disclosed to the Appellant. Finally, the Appellant requested the decision of the GWAEA Board finding that the ICCSD Board abused its discretion be overturned and that the Department affirm the decision of the ICCSD Board.

The Appellee argued that the Department should uphold the decision of the GWAEA Board.

The issue in this appeal is whether the ICCSD Board abused its discretion when it terminated discretionary busing for an area of the city of Iowa City which included the Bright's residence. The GWAEA Board concluded that the ICCSD Board abused its discretion and reversed their decision. We conclude this was an error of law and thus reverse the decision of the GWAEA Board. The parties do not appeal the decision of the GWAEA Board finding that the Appellees were not entitled to mandatory transportation.

CONCLUSIONS OF LAW

The Iowa Supreme Court has stated that the standard of review for these appeals is abuse of discretion. "[W]here a statute provides for a review of a school district's discretionary action, the review, by necessary implication, is limited to determining whether the school district abused its discretion." *Sioux City Cmty. Sch. Dist. v. Iowa Dep't of Educ.*, 659 N.W.2d 563, 568 (Iowa 2003). The abuse of discretion standard requires the GWAEA Board and the Department to look only at whether a reasonable person could have found sufficient evidence to come to the same conclusion as the school district. *Id.* at 569; *see also* Iowa Code § 17A.19(10)(f)(1). If a decision was not based upon substantial evidence or was based on an erroneous application of law we will find the decision is unreasonable. *Id.* However, neither the GWAEA Board nor the Department may substitute its own judgment for that of the school district. *See id.*

The GWAEA Board found that ICCSD Board abused its discretion when it decided to end discretionary busing of the Shimek attendance zone, which included the Bright children, because they found there were safety concerns that the District did not analyze. However,

under the abuse of discretion standard, we find a reasonable person could find substantial evidence supporting the ICCSD Board in this case.

Iowa Code section 285.1 provides the board of directors of every school district:

Shall provide transportation, either directly or by reimbursement for transportation, for all resident pupils attending public school, kindergarten through twelfth grade, except that:

(1) Elementary pupils shall be entitled to transportation only if they live more than two miles from the school designated for attendance....

c. Boards in their discretion may provide transportation for some or all resident pupils attending public school or pupils who attend nonpublic schools who are not entitled to transportation....

Iowa Code section 285.1(1) (2015).

The *Sioux City* case, on which the Appellees and the GWAEA Board rely, is factually identical to the facts and circumstances in this case. *Sioux City*, 659 N.W.2d at 563. In *Sioux City*, the parents appealed the decision of a school district not to provide bus transportation for students who lived *less than* two miles from their school. *Id.* (emphasis added). The AEA found the route students would have to travel was unsafe and reversed the school district and both the Department and the district court agreed. *Id.* The Iowa Supreme Court however, found that the school district did not abuse its discretion in deciding not to provide transportation and reversed. *Id.* The Court recognized that Iowa Code creates only one mandate for the school district to provide transportation to students who live *more* than two miles from the school. *Id.* at 567 (emphasis added). Beyond this requirement, the school district has the sole discretion to decide whether or not to provide transportation under any other circumstance. *Id.*

The GWAEA Board decision overlooks one important mandate that is paramount to a determination in this case. School districts are not required to provide any transportation beyond the mandate. Thus, if a school district determines it will not provide discretionary busing because of budgetary reasons that is within the power of the district to decide. Nothing in statute requires ICCSD Board to consider discretionary busing as an option for any of its students. Nor is there a requirement to provide discretionary busing if there is a safety concern. Nor is there a requirement to provide discretionary busing if there is a concern for attendance. Nor is there a requirement to provide discretionary busing for students with socio-economic barriers. Thus, we cannot say that ICCSD Board abused its discretion by choosing to provide discretionary busing to only one area of concern for the district but not all. It is not as if the Board did not consider safety issues at all. Neither we, nor the GWAEA Board, may substitute our judgement for that of the ICCSD Board.

Districts often make difficult decisions for budgetary reasons that do not make all parents happy, but allows the district to have a balanced budget. These discretionary decisions are best made by the district. We will not second guess those decisions as long as they are supported by substantial evidence and we find that exists here. The district was thoughtful in

its approach. There is no question the ICCSD Board made its decision based on budgetary reasons and chose to only provide discretionary transportation to areas of the community where there was a concern that it could create a barrier to student attendance in school. Although reasonable minds could differ under the reasonable person standard, the Department finds there is evidence to come to the same conclusion as the ICCSD Board. Thus, we find that the GWAEA's decision reversing the decision of the ICCSD Board is an error of law; therefore, we reverse the decision of the GWAEA Board finding that the ICCSD Board abused its discretion in denying discretionary transportation to the appellees. We find no abuse of discretion or failure to use discretion here.

Conflict of Interest

The Appellants have asserted a conflict of interest against the GWAEA Board on the basis that the attorney, James Peters, who represented the GWAEA Board at the hearing and wrote the decision is an attorney in the same law firm as Mr. Bright. Neither Mr. Peters nor Mr. Bright disclosed this to the ICCSD. Here, since we have already reversed the decision of the GWAEA Board on the merits and the Appellant has the complete relief it seeks, it is not necessary to make findings or conclusions about this issue.

DECISION

For the foregoing reasons, the decision of the Board of Directors of the Grant Wood Area Education Agency made on May 11, 2016, is AFFIRMED as to the finding that the Appellees are not entitled to mandatory busing and REVERSED in part as to the finding that the district abused its discretion and the decision of the Board of Directors of the Iowa City Community School District made on April 12, 2016, to deny discretionary busing to the Brights is AFFIRMED. There are no costs of this appeal to be assigned.

7/26/2016

Date

/s/ Nichole M. Proesch, J.D.

Nicole M. Proesch, J.D.

Administrative Law Judge

7/26/2016

Date

/s/ Ryan M. Wise, Director

Ryan M. Wise, Director

Iowa Department of Education