

IOWA STATE BOARD
OF EDUCATION
(Cite as 7 D.o.E. App. Dec. 101)

In re Richard Axmear :
Richard Axmear, :
Appellant, :
v. : DECISION
Tri-County Community :
School District, :
Appellee. :
On appeal from Southern Prairie :
Area Education Agency - - - - - [Admin. Doc. #2041] - - - - -

The above-captioned matter was heard on March 29, 1989, before a hearing panel consisting of David H. Bechtel, special assistant to the director, and presiding officer; Mr. Dwight Carlson, chief, Bureau of School Administration and Accreditation; and Mr. Bill Bean, assistant chief, Bureau of School Administration and Accreditation. Appellant Richard Axmear and Margaret Axmear appeared in person, unrepresented by counsel. Appellee Tri-County Community School District [hereafter the District] appeared in the person of Richard Corrick, superintendent of the District, also unrepresented by counsel.

An evidentiary hearing was held pursuant to Iowa Code chapter 290, section 285.12, and departmental rules found at Iowa Administrative Code 281-6. Appellants timely appealed a decision of the District board of directors [hereafter the Board] made on February 13, 1989, to approve certain transportation routes and boarding sites, and to deny the Appellant's request to travel down his private lane to pick up his children. The Board's decision was affirmed by the board of directors of Southern Prairie Area Education Agency 15 [hereafter AEA 15] on February 23, 1989, following a hearing.

I.
Findings of Fact

The presiding officer finds that he and the State Board of Education have jurisdiction over the parties and subject matter of the appeal before them.

Appellant is married to Margaret Axmear, a director on the Board, and they are the parents of four children, three of whom are of school age and ride the school bus. As far back as 1981, the Axmeares attempted to determine the feasibility of the school bus traveling down their lane to pick up their children because of their concerns about having them picked up on the county road. At that time, Appellant or his wife was allegedly told by a then-seated Board member that the District's insurer would not

provide coverage should the bus depart from the highway to travel down Appellant's lane. Although they accepted this explanation at the time, their concern for their children's safety did not pass.

Several years later, another Board member checked into the insurance situation and told Appellant that the carrier would indeed provide continued coverage should a school bus route include travel down a private lane. At that time, Appellant again sought the Board's approval of a bus route that would pick up his children in the lane rather than the two-lane county highway. No written Board policy existed. Appellant's request was apparently denied or otherwise not acted upon.

On October 10, 1988 Appellant appeared before the Board on the agenda and formalized his request for this deviation in the bus route. A motion not to pick up students by driving down private lanes failed. A second motion to "go up private lanes that are well maintained and have easy access" also failed. See Previous Record, Board Minutes of October 10, 1988 at page 1. Apparently some of the directors were concerned about fairness to all children similarly situated; if Appellant's request were granted, other children who lived off the highway and had traversable lanes would either be denied the same treatment (because they hadn't asked that the bus travel down the lane) or the Board would have to grant every request to take the bus down a lane.

Thereafter, on November 14, Appellant again appeared before the Board, but no action was taken. On February 13, 1989, another motion, this time to evaluate each request (to travel down a lane to pick up students) on its own merits rather than passing a blanket policy of "never" or "always," was made but failed to pass. Appellant appealed this Board action to the AEA 15 board pursuant to Iowa Code section 285.12. The AEA 15 board affirmed the District Board's decision, 5-1. This appeal followed.

At hearing testimony and evidence were presented on the geographic conditions of the designated school bus stop for Appellant's children, and school board policies related to the transportation of pupils. Two policies were particularly relevant: "Special Convenience Bus Stops," Board Code No. 702.9, reads as follows:

No bus shall leave the public highway to receive or discharge students unless their safety is ensured or the private road is maintained in the same manner as the public highway.

A bus shall not stop to load or unload students unless the driver has an unobstructed view of at least 300 feet in each direction, except to the extent that visibility is reduced by fog, snow, or other weather conditions. In such circumstances the driver is expected to use [his or her] best judgment to ensure the safety of the children and the bus.

A proposal existed at the time of hearing, designated as Board Code No. 702.10, which had not yet become Board policy. It states, "All bus stops will be made at the end of lanes on public highways unless other

designated stops are made by Superintendent with approval of Board of Directors." Appellee's Exhibit P.

Also of significance at hearing was evidence and testimony that as a practice the District reverses the order "where possible" of picking up students on the bus routes after first semester. Appellee's Exhibit P. This is done for fairness, according to Superintendent Corrick, so that the children who are picked up at the beginning of the route in the fall (and hence ride the bus the longest) are picked up at the end of the route in second semester (thus riding the bus the shortest time). This reversal of routes began on January 16, 1989, and affected all but two routes, not at issue here. The reversal had the impact on Appellant's children, and children at seven other stops, of requiring them to cross the highway to be picked up or dropped off, or both. The route prior to the reversal allowed the children at those eight stops to embark or disembark on the same side of the highway as their homes are situated. Three other stops, before the reversal, required students to cross the highway to board or disembark the bus. In sum, of eleven stops affected by the route reversal, eight now require students to cross a highway.

Appellant testified that in lieu of the State Board reversing the District Board's denial of his request to have the bus travel his private lane, he would be satisfied with an order of the State Board requiring the District to abandon the route reversal practice; the risk of injury to his children (and of the majority of children riding in the district) in not having to cross the county road would be significantly reduced.

The hearing panel also finds as fact, in agreement with the AEA 15 Board, that Appellant's "lane is well maintained and there is no question that the bus could safely travel the lane to the farmstead." In addition to evidence on the condition of Appellant's lane, we also received evidence as to the visibility around the designated bus stop, highway conditions, and the recollected history of accidents in the immediate area of this boarding site.

II.

Conclusions of Law

The power of a local school district board of directors includes the authority to determine bus routes. Iowa Code §§281.1, .10, .11 (1989). The AEA boards also have some general duties in this area. See Iowa Code §285.9 (1989). The General Assembly has set certain guidelines for the transportation of pupils and the establishment of bus routes. A conditional authority exists for a school district to establish a bus route that includes departure from a main highway or road. Specifically, "[N]o bus shall leave the public highway to receive or discharge pupils unless their safety is enhanced thereby, or the private road is maintained in the same manner as a public roadway." Iowa Code §285.11(7) (1989).

Although the hearing panel is concerned about the safety of Appellant's children, there was insufficient evidence on which to conclude as a matter of law or fact that the Axmear children are endangered by the district's failure to travel down the lane to pick them up. Accord In re Mr. and Mrs. Layton Vick, 2 D.P.I. App. Dec. 215 (1980); In re Ottumwa Community School Dist. Transp. Appeal, 2 D.P.I. App. Dec. 209 (1980). If

reversal of the Board's decision were the only option available to the State Board, Appellant would fail in his appeal.

However, in the course of the hearing the panel grew to be convinced that this situation could be resolved through a compromise of sorts. The decision of the administration to reverse the routes at mid-year had the sole stated purpose of fairness to transported pupils in terms of riding time. The results of that reversal include placing approximately three times as many pupils in the position of having to cross a county highway to board or disembark the school bus. While we recognize and applaud the goal of fairness in riding time, we do not believe fairness should outweigh pupil safety as a motivation for the establishment of bus routes.

Although we are reluctant to place children at three stops in the position of having to cross a public highway, the fact remains that children at eight stops are required to do so when the routes are reversed. It is our hope that the visibility conditions at those three stops are excellent. (We assume it presents no safety hazard because those children were required to cross the road under the pre-reversal route.) We are persuaded here to recognize the safety of the largest number of transported pupils in our recommendation that the District administration cease the practice of reversing routes under the conditions that exist in this case.

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

III. Decision

For the foregoing reasons, the decision of the Tri-County Community School District Board of Directors made on February 13, 1989, not to pass a resolution to allow the school buses to travel down private lanes under the proper conditions is hereby affirmed. However, the Tri-County administration and board of directors is strongly urged to review the safety conditions, which we deem to outweigh the notion of fairness in riding time, and to cease the practice of reversing bus routes when a majority of transported children would be required to cross a public highway as a result.

Costs of this appeal, if any, are to be borne by the parties incurring them.

June 29, 1989
DATE

May 24, 1989
DATE

Karen K. Goodenow
KAREN K. GOODENOW, PRESIDENT
STATE BOARD OF EDUCATION

David H. Bechtel
DAVID H. BECHTEL, SPECIAL ASSISTANT
TO THE DIRECTOR
AND PRESIDING OFFICER