IOWA STATE BOARD OF
PUBLIC INSTRUCTION

(Cite as 3 D.P.I. App. Dec. 169)

In re Nathaniel Ross	:	
	:	
Mark and Jan Ross, Appellants	:	DECISION
v.	:	
Area Education Agency 13, Appellee	:	[Admin. Doc. 704]

The above entitled matter was heard on July 27, 1983, before a hearing panel consisting of Dr. James Mitchell, deputy state superintendent and presiding officer; Mr. A. John Martin, director, instruction and curriculum division; and Ms. Sharon Slezak, chief, publications section. Dr. Mitchell served as presiding officer pursuant to The Iowa Code Section 257.22, 1983. The Appellants, Mark and Jan Ross, were represented by Mark Ross. The Glenwood Community School District (hereinafter District) was represented by Attorney Ron Pearson. Area Education Agency 13 (hereinafter Agency) was neither present nor represented. The hearing was held pursuant to the Iowa Code Chapter 285, 1983, and Departmental Rules, Chapter 670--51, Iowa Administrative Code.

The Appellants are appealing a decision of the Agency Board of Directors affirming a decision of the District Board of Directors regarding the transportation of their son, Nathaniel.

I.
Findings of Fact

The Hearing Panel finds that it and the State Board of Public Instruction have jurisdiction over the parties and subject matter.

Mark and Jan Ross are the parents of three children and reside within the city limits of Glenwood, Iowa. Nathaniel, the oldest of the Ross children, will be entering kindergarten in the District in the fall of 1983.

In a letter to District officials dated March 28, 1983, Mr. and Mrs. Ross requested that Nathaniel be provided school bus transportation to and from school. The letter noted, "lack of sidewalks" in the neighborhood, an existing school bus route going by their residence daily, and the closing of a bridge in the neighborhood resulting in a longer route to and from school for their son as reasons for the request. The letter also noted that when school started, the family would have a newborn baby and a 19-month-old baby, and concluded that, " . . . it would make it much easier on the babies and mother if a bus could stop and pick up our boy."

At some time subsequent to March 18, Mr. and Mrs. Ross provided District officials with letters from two Omaha, Nebraska, doctors which they considered substantiation for

their request. One letter was from Janice Ross' doctor, Dr. Bernard Magid, and reads as follows:

> To Whom It May Concern:
>
> Mrs. Ross will have a newborn baby at the time of the next school term when her other young child will be attending your schools for the first time. It would seem a practical thing to allow this child to take the school bus in view of the fact that Mr. Ross works in Omaha and that Mrs. Ross will be perhaps not totally able to convey the young child to school.

The other was from Nathaniel's doctor, Dr. D. Wayne Marsh, and reads as follows:

> To Whom It May Concern:
>
> RE: Nathaniel Ross
>
> I am suggesting that the above named Child (sic) be allowed to ride the school bus because of the distance the family lives from the school and the hardship this would mean for the family with two very small infants.
>
> Thank you for your help in this matter.

In a letter dated April 18, District Superintendent Gene Nasalroad denied the Ross' request for school bus transportation for Nathaniel. The letter indicated that Mr. Nasalroad personally travelled Nathaniel's route to and from school and concluded that it was a safe route. In his letter, Mr. Nasalroad noted that the physician's statements did not detail any medical problem for Nathaniel, the distance to school as measured by him was eight-tenths of a mile, that sidewalks exist along most of the route, and that the bridge in the neighborhood was closed to automobile and truck traffic only, but was open and safe for pedestrian traffic. He notified Mr. and Mrs. Ross that under District policy, discretionary school bus transportation was limited to persons living outside the city limits of Glenwood. Copies of the April 18 letter were sent to District Board members.

On May 16, Mark Ross appeared before the District Board of Directors and requested that Superintendent Nasalroad's decision be reversed. He stated that his son was afraid to cross the neighborhood bridge closed to automobile and truck traffic, and that because his wife would have restricted activities after the expected birth of their third child and he left for work at 6:00 a.m., they would be unable to transport their son to school. Mr. Ross informed the Board that Nathaniel is very suseptible to ear infection and has had as many as six ear infections in the previous eight months.

When asked by a Board member about the possibility of the family joining a carpool, Mr. Ross indicated that the alternative was undesirable. He stated that he did not want his son exposed to some of the vulgar language used by some of the children in his neighborhood. The District Board voted to table the issue until its June 13 meeting.

At the June 13 meeting, Mr. Ross again appeared before the Board. He argued that the alternate route to that over the closed bridge was too far for the boy to walk, and his walking to school increased the boy's chance for ear infection. After discussion of the matter by Board members, the Board voted to deny the Ross' request

for transportation for Nathaniel. Mr. and Mrs. Ross appealed the District Board decision to the Agency Board of Directors under Section 285.12.

The Agency Board held a hearing on the matter on July 5, 1983. Mr. Ross presented his side of the issue. Following hearing, review of the record and deliberation on the matter, the Agency Board of Directors voted to affirm the decision of the District Board. The Agency Board expressly found that the medical record before them did not show that Nathaniel's medical problem would be alleviated by the provision of school bus transportation. Mr. and Mrs. Ross filed an appeal of the Agency Board decision with the State Superintendent as provided in Section 285.12 on July 15, 1983.

Evidence before the Hearing Panel indicates that the measured distance from the Ross residence to the school of attendance is some place between eight-tenths of a mile and one and six-tenths of a mile. All parties agree that the measured distance is less than two miles.

Additional medical evidence was presented to the Hearing Panel in the form of two letters from Omaha, Nebraska, Dr. P. Wayne Marsh. They read as follows:

May 7, 1983

RE: Patient Nathaniel Ross

To Whom It May Concern,

Due to past history of recurrent illnesses, I would recommend that Nathaniel be provided with bus transportation to and from school thus decreasing his exposure to the elements.

7-8-83

Nathaniel Ross was involved with persistant & recurrent ear infections and congestion, with repeated treatment during these times. He was seen 2/17/83, 5/7/83 and several medications in the interim.

It seems a logical move to avail this patient of bus service which would be available if he lived .4 miles farther from school - i.e. - the medical history & involvement might out weigh this 'deficiency' in requirements.

Your good judgment is requested in this health regulatory discussion.

Mr. Ross testified before the Hearing Panel that the request for transportation would be only for one or two years. It is after that time that Nathaniel's mother will be able to drive him to school. He also indicated that there is no medical restriction on Nathaniel's activities. He is not restricted in his play or location because of medical reasons.

Superintendent Nasalroad indicated before the Hearing Panel that about 21 children living in the Ross neighborhood cross the bridge in question on their way to school. He also indicated that the school bus passing the Ross residence was full even though some of the students do not ride every day. The record shows that a special noon kindergarten route stop would have to be established for Nathaniel.

II.
Conclusions of Law

The Appellants have requested that the Hearing Panel find in their favor and overturn the Agency Board decision affirming the District Board decision, or in the alternative, submit the matter back to the District Board for consideration of additional medical evidence. We are not inclined to do either. In appeals of this nature, the burden is on the Appellant to show that the decision or decisions appealed were inappropriate, improper, inadvisable or a violation of law. See In re Douglas B., 1 D.P.I. App. Dec. 274, 277. We have not been shown such here.

The strongest argument the Appellants presented is that of Nathaniel's medical need. Yet, the record falls far short of establishing that need. The several statements of medical professionals in the record fall short of linking Nathaniel's prolonged exposure during a walk to and from school with an increased likelihood of additional ear infection problems. Indeed, he has had a recurring problem and has not yet been exposed to a walk to school of any length or duration. His boyhood activities have not been restricted in any way. Why should the school be expected to provide discretionary transportation in the absence of substantially more compelling medical evidence. We see no reason to direct it to do so on the record before us.

The record strongly indicates, especially the early communications with the District, that the primary issue in this appeal is family convenience. The parents and other children in the family do not appear to be very willing to make sacrifices to protect Nathaniel's health by providing him transportation to school, nor have they been very open to alternative solutions to the problem. It appears that while the family perceives a need for Nathaniel to be transported to school, they feel that the school should fill that need before they or anyone else. We reject that philosophy.

The statutes in Iowa provide that elementary-age children residing more than two miles from their designated attendance center must be provided transportation to school. § 285.1(1)(a). For elementary-age students living less than two miles from school, the local board of directors may exercise its discretion and provide transportation, and it may charge for such optional transportation. § 285.1(1), second unnumbered paragraph.

School boards requested to exercise their discretion under the latter provision for reasons of health, safety or other good reason should consider the rerequest, exercise its discretion and articulate reasons for its decision. That is precisely what the District Board has done in this circumstance. Should conditions change or new evidence be available, subsequent requests for consideration should be given the same degree of consideration as that given previously in this matter. While district boards are responsible for providing a safe and efficient transportation system, it behooves them to exercise their good judgment humanly when shown reason to do so. What the District Board has said in this appeal is that it has not been shown such good reason, and we agree.

The Appellant argued that "irregularities" existed with the District Board's decision in this matter due to Superintendent Nasalroad sending copies of his April 18 letter to Board members and the fact that Nathaniel's godfather sat on the District Board. We have not been shown that the situation here is one which the Appellants are entitled by law to an impartial decision maker, that the Appellants' position was prejudiced by those factors, or that the District Board's de-

cision was, in fact, prejudiced by those factors. In the absence of any one of the three, we would find it difficult to rule in favor of the Appellants on the argument. In the absence of all three, we cannot possibly do so.

In District arguments before the Hearing Panel, there were overtones that the State Board standard of review was limited and neither the Agency Board or the State Board could substitute their judgment for local board. That position was rejected in _In re Appeal of Cedar Rapids Community School District_, 1 D.P.I. App. Dec. 74, and every appeal in which it has been raised since. Any other interpretation would render the appeal provisions of Section 285.12 a nullity.

All motions and objections not previously ruled upon are hereby overruled.

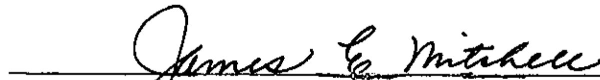
III.
Decision

The July 5, 1983 decision of the Area Education Agency 13 Board of Directors affirming the June 13, 1983 decision of the Glenwood Community School District Board of Directors rendered in this matter is hereby affirmed.

August 11, 1983
DATE

KAREN K. GOODENOW, PRESIDENT
STATE BOARD OF PUBLIC INSTRUCTION

August 1, 1983
DATE


JAMES E. MITCHELL
DEPUTY STATE SUPERINTENDENT OF PUBLIC INSTRUCTION
AND
PRESIDING OFFICER

What may have occurred in this appeal is that Agency Board members may have confused the merits of the Appellants' case with an attack upon the policy itself. Indeed, the Agency Board had previously found on the merits that the situation involving students from Woodland Park was hazardous. We, however, find those two distinct issues.

It is possible that the issue on its merits will again arise. In the event the District Board would refuse discretionary transportation to the patrons of Woodland Park under the policy, the patrons could again appeal to the Agency Board. Unless the facts substantially change, it is likely that the earlier finding by the Agency Board that the pedestrian route to school was hazardous would be considered res judicota, and the District would be directed to provide school transportation for those children. But all that is speculative on our part, and not directly related to the attack upon the face of the policy as exists before us.

We find the issue of charging fees for discretionary transportation should have the same result. Section 285.1 clearly authorizes the District Board to charge "not more than the pro rata cost" for discretionary transportation, and Declaratory Ruling #34 affirmed the validity of the application of the statute to the District transportation policy. In the absence of a showing on the part of individuals ill-effected by the policy on the basis of indigency or other good grounds, we are not inclined to overturn that portion of the District policy which authorizes the charging of fees. This is a practice of long standing. See Declaratory Ruling #6, 1 D.P.I. Dec. Rul. 14.

In summary, we find that the Agency Board erred in finding the corporate limit aspects of the transportation policy arbitrary and contrary to statute, and we find the Agency Board was correct in not overturning the policy on the grounds that fees may be charged for discretionary transportation.

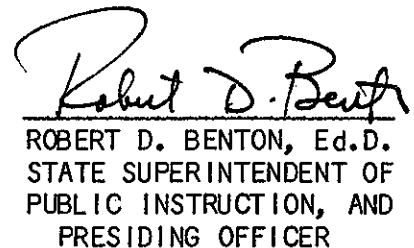
III.
Decision

The decision of the Board of Directors of Area Education Agency 11 issued in this matter on October 15, 1984, is affirmed, in part, and reversed, in part.

January 17, 1985
DATE

December 20, 1984
DATE

LUCAS J. DEKOSTER, PRESIDENT
STATE BOARD OF PUBLIC INSTRUCTION



ROBERT D. BENTON, Ed.D.
STATE SUPERINTENDENT OF
PUBLIC INSTRUCTION, AND
PRESIDING OFFICER