

IOWA STATE BOARD OF PUBLIC INSTRUCTION

(Cite as 4 D.P.I., App. Dec. 34)

In re Newton Community School District :

Newton Community School District, :
Appellants :

v. :

Area Education Agency 11, Appellee :

DECISION

In re Terry Dannen, et al. :

Terry Dannen, et al., Appellants :

v. :

Area Education Agency 11, Appellee : [Admin. Docs. 770 and 772]

The above entitled matter was heard on November 27, 1984, before a hearing panel consisting of Dr. Robert Benton, state superintendent and presiding officer; Mr. David Bechtel, administrative assistant to the state superintendent; and Dr. Orrin Nearhoof, director, Teacher Education and Certification Division. The hearing was held pursuant to the Iowa Code section 285.12, 1983, and Departmental Rules, chapter 670--51, Iowa Administrative Code. The Newton Community School District (hereinafter District) was represented by Attorney Edgar Bittle. Attorney Brad McCall represented Terry Dannen and other parent Appellants, and Attorney John Phillips represented Area Education Agency 11 (hereinafter Agency).

The parent Appellants and the District are both appealing a decision of the Agency Board of Directors regarding transportation in the District. The two appeals filed by the District and the parents have been joined for purposes of hearing and decision.

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.

The dispute currently before us is of longstanding duration. In 1982, the District Board adopted a transportation policy change. This change resulted in students from the Woodland Park area of the community of Newton no longer being eligible to receive free school bus transportation. The change was to become effective at the beginning of the 1983-84 school year.

During July of 1983, newly hired District Superintendent Thor Petersen received a telephone call from Mrs. Terry Dannen. Mrs. Dannen expressed concern with the new student transportation plan, and Mr. Petersen agreed to review her concern.

In August, 1983, Mr. Petersen met with other District administrators to discuss the new transportation plan. He learned that the new plan was designed to resolve problems previously existing in the District. The previously existing transportation program had resulted in a wide variation in the amounts of instructional time available to students attending the District's seven elementary attendance centers and as much as a forty-five minute discrepancy in instructional time between transported and nontransported high school students. Modification of the existing program was also necessary as a result of the closing of a junior high school and the assignment of all ninth grade students to the high school.

The previous plan generally followed the transportation entitlement provisions of state statutes. Generally, elementary age students were transported to school if they lived more than two miles from their attendance centers, and secondary students were transported if they lived more than three miles from school. As a result of patrons requesting and receiving discretionary transportation, several exceptions had been made over the years. The Woodland Park area of the Hough Elementary School attendance area was one of the areas of Newton where such exceptions had been granted.

The transportation plan approved for the 1983-84 school year included no provision for transporting elementary students residing in the Woodland Park area of Newton and at least one other area of the community. However, two exceptions to the general entitlement limits were included in the plan.

In reviewing the concerns of Woodland Park area residents for the safety of their children on the way to and from school, District officials requested and received assistance from the Public Safety Committee of the city of Newton. The District and city implemented the Committee's recommendations.

At a regular meeting of the District Board on August 15, 1983, patrons of the District residing in the Woodland Park area were present to protest the implementation of the proposed transportation program at the start of the forthcoming school year. Superintendent Petersen recommended that the District implement the new transportation plan on a trial basis through October 16 with a final recommendation to the Board scheduled for October 10. The Board approved the Superintendent's recommendation, and two Woodland Park area residents filed an appeal of the decision with the Agency. Considerable review and reconsideration of the issue occurred during the next two months, but the District Board took no action on October 10.

On October 27, the hearing on the transportation appeal was heard by the Agency Board. In its decision issued on October 31, the Agency Board overturned the District Board decision to implement the new transportation program insofar as it related to the Woodland Park students, and emphasized that the appeal did not involve an issue of whether the Woodland Park residents could be charged for the transportation provided. The basis for the decision was a finding that "unusually hazardous and unsafe conditions exist along the routes traveled by Woodland Park elementary students."

The District restored transportation to the students of the Woodland Park area but appealed the Agency decision under the authority of Section 285.12. The appeal was later withdrawn, and District officials resolved to revise the then existing transportation policy. A committee of parents, Board members, and school staff, including teachers, was established to develop a new transportation policy.

The Committee and District administrators worked on the development of a new policy until April, 1984. At that time it was decided that the District would ask the Department of Public Instruction to review the proposed policy and issue a declaratory ruling regarding its legality.

The request for declaratory ruling set out the relevant portions of the proposed policy in detail. Generally, the proposed policy provided that all elementary and high school students residing outside the corporate limits of towns located in the District were entitled to free transportation regardless of their distance from attendance centers, and elementary students residing within the corporate limits of Newton, but residing more than two miles from their attendance center and high school students residing more than three miles from their attendance centers would be entitled to free school transportation. Elementary and high school students residing within the corporate limits of Newton, but less than two and three miles respectively from their attendance centers, would not be entitled to free transportation. Parents of students not entitled to free transportation under the policy could apply to a Transportation Review Committee to have transportation provided for a fee. The Transportation Review Committee was to establish criteria for assessing eligibility requirements for students not entitled to free transportation under the policy, and review parent requests for transportation of students not otherwise entitled to transportation under the policy. The criteria primarily involved pedestrian safety factors.

Under the then proposed policy, as outlined in the declaratory ruling request, all elementary students living within the corporate limits of Newton and less than two miles from their designated attendance center would be provided transportation only upon a showing of need. In all such cases, a fee would be charged for transportation.

The specific questions raised by the District in the declaratory ruling request were whether the district could charge a fee for students who resided within the corporate limits of Newton and inside the two and three mile limits, whether the District could provide free transportation to students who live outside the corporate limits of communities within the District even though they reside within the two and three mile statutory limits for eligibility for transportation, and whether the District could charge a fee to students who lived within the city of Newton and within the two or three mile limit from an attendance center where transportation is provided based upon review of the Transportation Review Committee.

Declaratory Ruling #34 responded to the questions, "generally in the affirmative." It stated, however, that some issues regarding application of the policy to specific factual circumstances still remained subject to review by the Agency should someone file an appropriate appeal. Two examples of potential appeal issues mentioned in the ruling included decisions of the Transportation Review Board on safety issues and issues related to requests for waiver of fees.

After receiving Declaratory Ruling #34, Superintendent Petersen recommended that the District Board adopt the proposed transportation policy. The Board finally approved the policy on August 13, 1984. Fees established for optional transportation were considerably lower than that authorized by law. The District charges \$.25 per ride, \$.50 per day or about \$90.00 per year per child. Parents were notified how to apply for optional transportation and reduced transportation fees.

The parent Appellants filed an appeal of the August 13 adoption of the policy with the Agency Board. There was no specific issue of refusal to transport or refusal to waive a fee involved. After hearing and deliberation, the Agency issued its decision on October 15, 1984. The Agency Board, by vote of four to three, ruled that the use of corporate limits in establishing entitlement was "arbitrary" and contrary to statute and should be deleted from the policy. By a vote of five to one, with one abstention, the Agency Board ruled that the District transportation fee was legal. The District filed an appeal of the former portion of the ruling and the parents filed an appeal of the latter.

The record very clearly discloses a sincere effort on the part of District officials to develop a District transportation policy which was equitable and fair in the context of the needs of the District. District officials convened a committee of persons to study the issues involved, reviewed existing transportation policies in a number of other school districts, sought advice and counsel from numerous local and state authorities, and effectively sought and received input and information from citizens affected.

We cannot conclude as a matter of fact that the District Board acted arbitrarily in enacting the transportation policy at issue here. We do not conclude as a matter of fact that there is no reasonable basis for the utilization of corporate boundaries as a basis for determining entitlement to school transportation under local board policies. A clear distinction often exists between incorporated and unincorporated areas with regard to a number of issues including police protection and existence of sidewalks. See, e.g., Section 320.1.

II. Conclusions of Law

We have before us two issues regarding the District transportation policy adopted on August 13, 1984. The issue raised by the District on appeal is whether the Agency Board erred in determining that the use of corporate boundaries for the provision of discretionary school transportation is arbitrary and contrary to law, and the issue raised by the parent Appellants is whether the Agency Board erred in ruling that students of the Woodland Park area should not be provided free transportation.

While at first glance the issues involved in this appeal appear to be most difficult, in fact, they are not. This appeal is limited to an attack of the District Board policy on its face. It is not, as some of the parties have assumed, an attack upon the application of the policy to any individual situations. No issue exists before us of a parent's request for discretionary transportation or a parent's request for waiver of discretionary transportation fees. We have before us only the issue of the legitimacy of the policy itself.

On that very narrow basis, we find that the District transportation policy at issue here is valid on its face. We feel that in the absence of information contrary to that contained in Declaratory Ruling #34, we are constrained to reaffirm the position contained in that ruling. In effect, there are no legal prohibitions to the District transportation policy as it is currently drafted.

Even in the absence of Declaratory Ruling #34, we are compelled to affirm the legality of the policy by the logic contained therein. The laws of Iowa grant broad discretion to local school boards in the establishment of criteria for discretionary school transportation and the charging of fees for discretionary transportation. Section 285.1, subsection 1, reads in relevant part as follows:

285.1 When entitled to state aid.

1. The board of directors in 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;

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

b. High school pupils shall be entitled to transportation only if they live more than three miles from the school designated for attendance.

For the purposes of this subsection, high school means a school which commences with either grade nine or grade ten, as determined by the board of directors of the school district or by the governing authority of the nonpublic school in the case of nonpublic schools.

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. Boards in their discretion may collect from the parent or guardian of the pupil not more than the pro rata cost for such optional transportation, determined as provided in subsection 12. [emphasis added]

We believe that the above quoted language means what it says. The District may provide transportation for "some or all" students not entitled to transportation by statute. The District has, through the use of corporate boundaries, determined who the students are who will receive discretionary free transportation. While we may have preferred to use other criteria, unlike the Agency Board, we do not find the use of corporate boundaries so unreasonable as to be arbitrary and contrary to statute. Previous state transportation statutes themselves took corporate boundaries into consideration. See Section 285.1, 1973 Code of Iowa. Neither do we find the use of corporate boundaries a violation of the Equal Protection provisions of the Constitution.

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 judicata, 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


LUCAS J. DEKOSTER, PRESIDENT
STATE BOARD OF PUBLIC INSTRUCTION

December 20, 1984

DATE


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