

IOWA STATE BOARD OF
PUBLIC INSTRUCTION

(Cite as 3 D.P.I. App. Dec. 220)

In re Steven and Lynette Delagardelle	:	
	:	
Steven and Lynette Delagardelle, Appellants	:	DECISION
	:	
v.	:	
	:	
Area Education Agency 7, Appellee	:	[Admin. Doc. 712]

The above entitled matter was heard on October 10, 1983, before a hearing panel consisting of Dr. Robert Benton, state superintendent and presiding officer; Mr. Bill Bean, chief, educational equity section; and Ms. Sharen Slezak, chief, publications section. The hearing was held pursuant to The Iowa Code Section 285.12, 1983, and Departmental Rules Chapter 670--51, Iowa Administrative Code. The Appellants were represented by Attorney Jon Fister, and the Waterloo Community School District (hereinafter District) was represented by Attorney Sydney A. Thomas. The Appellee, Area Education Agency 7 (hereinafter Agency) was not present nor represented.

The Appellants are appealing a decision of the Agency Board of Directors upholding the decision of the District Board of Directors denying transportation to their son.

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.

Adam Delagardelle is enrolled as a kindergarten student in the District for the 1983-84 school year. He resides in the southeastern part of the District in a rural area with his parents, Steven and Lynette Delagardelle. The family residence is approximately eight miles from the elementary school designated as his attendance center.

Normal transportation routes in the area of the Delagardelle residence have been disrupted greatly by construction and planned construction of interstate highways 380 and 520. The disruption of transportation routes appears to be permanent. As a result of the disruption, District school buses providing transportation for Adam would be required to travel an unusual distance beyond the nearest other student picked up by the school bus. In the morning, the school bus would travel an additional eight miles round trip to pick up Adam, and the noon kindergarten bus would have to travel an additional ten miles round trip to return him to his home. The resulting extra travel beyond the next nearest student's residence, based on a 180 day school year, would be 3,240 miles. Based on a District average of \$1.45 per mile to operate a school bus the expense to the District of picking up Adam beyond the next nearest school bus stop would be approximately \$4,698 a year.

As a result of this unusual expense and District Policy, the District administration determined that the District would provide Adam's parents with financial reimbursement for school transportation rather than actual transportation by school bus. The estimated amount of reimbursement, as determined under state law, is \$210 for 1983-84 school year. The Delagardelles estimate their expenses for transporting Adam to be at least \$1,080.00 and, depending on the specific arrangements, possibly exceeding \$2,000.00. The District elementary transportation policy reads as follows:

The Board of Directors will provide transportation for elementary school students (k-5) who live more than one (1) mile from their assigned attendance center.

In cases where there are fewer than ten students to be transported from an area, the parents may be required to furnish transportation and therefore become eligible for district reimbursement.

Parents may choose to provide transportation without reimbursement regardless of distance from the attendance center.

In May, 1983, Mr. and Mrs. Delagardelle requested that the District Board agree to change its boundaries with the Jesup Community School District so that the Delagardelles and their immediate neighbors in the same situation would have their residential properties transferred to the Jesup District. The Jesup District agreed to approve the boundary change on the condition that the District Board concurred. At its June meeting, the District Board denied the Delagardelle request for a boundary change.

Mr. and Mrs. Delagardelle then requested that the District Board of Directors review the administrative decision regarding the reimbursement of transportation costs rather than actually providing school bus

transportation. The Board considered the matter at its regular meeting on August 8, 1983. Mr. and Mrs. Delagardelle were allowed to present their position through their attorney. The District administration recommended that Adam not be transported on a school bus, but instead, the family be reimbursed as provided by law. The summary of rationale provided for the administration's recommendations includes the following:

- Board policy EEAB precluded transportation except by reimbursement when fewer than ten children reside in the area.

- The family refused alternatives offered them, including:

- sending the child to a full day kindergarten program,

- transporting from a day-care center served by school transportation to any appropriate District elementary school.

After discussion of the matter, the Board voted to concur with the administrative recommendation. Mr. and Mrs. Delagardelle appealed the District Board decision to the Agency Board of Directors under Section 285.12, and a hearing was held before the Agency Board on September 15. After the taking of evidence, the Agency Board deliberated for about two hours. The Agency Board then recessed and reconvened on September 19, via teleconference. After additional discussion and consideration, the Agency Board voted six to one with two absent to uphold the District Board decision. The Agency Board ruled that the District could meet its obligation of transportation either by actually transporting Adam or by reimbursing his parents for the transportation, and since the District chose the latter, it was in compliance with the law.

Evidence showed that the length of time to transport students would be increased on a school bus route picking up Adam at home, but the total time would not exceed maximum state time limits for school bus transportation provided to students. The route, even picking up Adam, would not be the longest in the District considering both time and mileage. The average annual per pupil cost of school bus transportation in the District is about \$230.00.

II. Conclusions of Law

There is no dispute that the District is responsible for providing transportation to Adam Delagardelle. The Iowa Code Section 285.1(1), 1983, clearly places this responsibility upon the District. That Section states in relevant part as follows:

285.1(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. [emphasis added]

The problem which arises here is a narrow one, but one which has broad implications. The question is whether the District Board has discretionary authority to choose between a direct form of transportation by school bus or the reimbursement of parents for providing transportation for their children. The Delagardelles argue that Section 285.1, subsection 3, precludes the District Board from exercising any discretionary authority. That subsection reads, in relevant part, as follows:

285.1(3) In a district where transportation by school bus is impracticable or where school bus service is not available, the board may require parents or guardians to furnish transportation for their children to the schools designated for attendance. The parent or guardian shall be reimbursed for such transportation service for public and nonpublic school pupils by the board of the resident district in an amount equal to eighty dollars plus the following percent of the difference between eighty dollars and the previous school year's statewide average per pupil transportation cost, as determined by the department of public instruction: [emphasis added]

Under the argument put forth by the Delagardelles, two conditions must be met before the District can elect to reimburse parents for mandated transportation. Either direct transportation must not be available, or it must be "impracticable." Since the parties do not dispute that transportation is available in the District, the issue focuses around the word "impracticable." The Delagardelles argue that the word "impracticable" is usually defined as bordering on the impossible. A quick review of several dictionaries verifies this position. The issue does not end here, however. The District has argued that the word "impracticable" has been defined in some court decisions as being something much different than, and less than, impossible. The cases cited seem to indicate that excessive and unreasonable cost facts may be taken into account when making determinations of whether something is "impracticable."

While those cited decisions and others may give guidance as to the statutory construction of the word "impracticable" in other contexts, they are not of definitive help to us here. We have been shown no Iowa case law defining the term as used in the context before us, and we have not found any through independent research.

We have, however, located several code references in Chapter 285 which do indicate rather clearly that the District's argument should prevail. The strongest of those statutory provisions is found in Section 285.11. See also Section 285.10(2) and (8). That Section reads in relevant part as follows:

285.11 Bus routes--basis of operation. The establishment and operation of bus routes and the contracting for transportation shall be based upon the following considerations;

* * * * *

2. Each bus route shall serve only those pupils living in those areas where transportation by bus is the most economical method for providing adequate transportation facilities. [emphasis added]

The requirement of Section 285.11, subsection 2, is in harmony with District policy on the transportation of students and in direct conflict with the interpretation of the word "impracticable" as defined by the Delagardelles. The only appropriate way to avert a conflict between the two statutory provisions is to provide a different meaning to the word "impracticable" than that offered by the Delagardelles. We find that we agree with the District's interpretation that "impracticable" is something less than impossible and that cost factors may be taken into account when determining impracticability.

We must note, however, that school districts do not have complete and arbitrary discretion under Section 285.1, subsection 3, to decide whether it will provide transportation directly or by reimbursement. We find that the legislature intended that one of two standards must first be met. Those standards are impracticability and unavailability of direct transportation. When direct transportation is available, as it is in the District, before the District may reimburse parents for transportation, it must be able to establish that transportation is impracticable.

A conclusion that the District Board acted within its legal authority does not totally resolve the issue, however. The scope of review of the State Superintendent and the State Board is de novo. *Arbore v. Cedar Rapids Community School District*, 1 D.P.I. App. Dec. 74. On de novo review we find the position of the Appellants in their request for transportation for their son to be the more persuasive. The Appellants

sought and were refused a District boundary change which would have resolved their problem. In doing so, the District maintained the right to expect the Appellants' son to attend school in the District and thereby generate state aid revenue. It is hardly equitable to not only refuse the Appellants their request for a boundary change, but to also burden them with the responsibility of transporting their son to school at considerable cost to them. While the financial burden on the school to transport may be greater than the financial burden on the parents, it is the lesser of the two burdens, considering the relative resources available to each.

We also conclude that the District use of an additional cost figure of \$4,698.00 a year is somewhat misleading. If an additional cost figure was the determining factor, many students at the furthest end of a bus route would be in jeopardy. We note that the District average per pupil transportation cost of about \$230.00 is little different than the amount of parent reimbursement.

We also note that several other residences are located in the immediate area of the Appellants residence. Should other children of school age reside in those homes, the relative financial burden on the District would be lessened. But if all the parents in the area had to transport their children, the burden to the families would be multiplied. We conclude that it is more equitable for the District to provide school bus transportation in this situation than it is for the parents to be provided reimbursement for transportation.

III. Decision

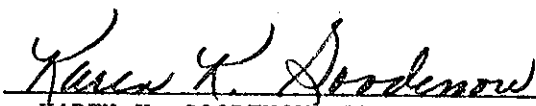
The decision of the Area Education Agency 7 Board of Directors affirming the decision of the Waterloo Community School District Board of Directors in this matter is hereby overruled.

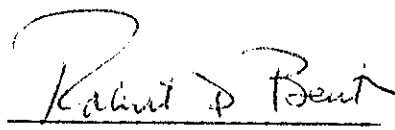
December 9, 1983

DATE

November 1, 1983

DATE


KAREN K. GOODENOW, PRESIDENT
STATE BOARD OF PUBLIC INSTRUCTION


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