

IOWA STATE DEPARTMENT  
OF PUBLIC INSTRUCTION

(Cite as 2 D.P.I. App. Dec. 50)

In re Robert Marovich

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Robert Marovich, Appellant

:

DECISION

v.

:

:

Grant Wood AEA 10

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[Admin. Doc. 505]

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The above entitled matter was heard on August 14, 1979, at the Grant Wood Area Education Agency located in Cedar Rapids, Iowa, before a hearing panel consisting of Dr. Robert Benton, state superintendent and presiding officer; Dr. LeRoy Jensen, associate superintendent, administration; and Mr. Gayle Obrecht, director, administration and finance division. Robert Marovich was present and presented his appeal to the Hearing Panel. The Cedar Rapids Community School District (hereinafter District) was represented by District Board Secretary Otto Wiedersberg; and Area Education Agency 10 (hereinafter AEA) was represented by Administrator Dwight Bode. The hearing was held pursuant to Section 285.12, The Code 1979, and Chapter 670--51, Iowa Administrative Code. The Appellant appealed a decision of the AEA Board of Directors affirming the District Board of Directors' refusal to transport his children to school.

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 Appellant resides with his wife and three children, ages 9, 7 and 4, on Heatheridge Drive N. E. in Cedar Rapids. That portion of Heatheridge Drive upon which the Appellant resides is a dead-end street commonly referred to as a cul-de-sac. The Appellant's school-age children normally begin a route from home to school at their home on Heatheridge Drive. They then walk to Glass Road and along it for about .4 of a mile to Shasta Drive. From Shasta Drive they likely walk along Wenig Road, Cold Stream and Chestnut Lane to Adams Elementary School. The route is approximately 1.6 miles in length. Most of the route, except for Glass Road, is composed of two- and four-lane streets in a suburban area of the city. Sidewalks are located in a haphazard manner, but most places where sidewalks are absent have ample space adjacent to the street upon which to walk. School buses belonging to the District pass through the intersection of Heatheridge Drive and Glass Road transporting children to Adams school.

Glass Road, however, presents a different situation. The approximate .4 of a mile stretch is in a largely unimproved quasi-rural area with no sidewalks. It has many curves and hills to obstruct pedestrians and driver vision. It is asphalt covered with no shoulder present much of the time. In one area along Glass Road, hills rise steeply from both sides of the traveled roadway. At this location, no drainage ditch or shoulder exists and it is obvious that snow removal vehicles would have a difficult, if not impossible, job keeping the roadway clear to two-lane traffic. Conditions along this section of Glass Road would require pedestrian traffic to enter upon the portion of the roadway traveled by vehicle traffic. None of the parties to this appeal have ever disputed the hazardous condition of pedestrian traffic along Glass Road.

Considering this stretch of Glass Road too hazardous to the safety of his children, the Appellant made the request to school officials that his children be transported to school in a District school bus. After refusal by the officials, he appeared before the District Board on May 14, 1979, and requested school transportation for his children. The District Board refused his request and reaffirmed the positions stated in District transportation regulations 901.1 and 901.2. The relevant language contained in those regulations read as follows:

- 901.1 The District shall furnish transportation to pupils who do not live the required distance from school only when the Area Education Agency determines transportation is necessary or when such transportation is essential to the implementation of the District's Desegregation-integration Plan.
- 901.2 Fees for transportation services shall be charged pupils who do not live the required distance from school when the Area Education Agency determines that transportation is necessary and funds for the transportation are not included in the school foundation formula or authorized by the Iowa School Budget Review Committee.

Mr. Marovich then appealed to the AEA Board of Directors which heard the appeal on July 16, 1979. Following the hearing before them, the AEA Board members discussed the matter. During the discussion, several of the Board members stated that they felt the AEA Board had no authority to overrule the District Board in transportation matters. Following the discussion, the AEA Board voted to affirm the District Board decision. Mr. Marovich then appealed to the State Superintendent of Public Instruction.

The Hearing Panel made an on-site inspection of the Appellant's children's route to school.

## II.

### Conclusions of Law

The Appellant has stated that he feels that the District and AEA Boards of Directors are confused as to their respective jurisdictions over transportation issues, and requests that we aid them in clarifying their authority. We are happy to comply with this request.

The District Board of Directors has primary responsibility for all local transportation matters. This includes issues of whether or not elementary students residing within two miles and high school students residing within three miles of their respective attendance centers will be provided with transportation and whether the student's parents or guardians will be charged the cost for such discretionary bus transportation. This discretionary authority is found in Section 285.1, second unnumbered paragraph, and reads as follows:

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.

With such clear statutory authority, it is surprising to us that the District Board has, through its own written policy, abdicated its discretionary decision making in this area to the AEA Board of Directors. In a time period when many members of school district boards of directors are extolling the virtues of local control, we find such a situation puzzling.

Somewhat puzzling to us also is the apparent confusion on the part of some of the AEA Board members as to their authority in transportation appeals. In a decision rendered by the State Board of Public Instruction, almost four years ago, the State Board affirmed a decision of the AEA Board which overturned a decision of the District Board in a similar transportation issue. (RE: Appeal of Cedar Rapids Community School District From Grant Wood Area Education Agency; Mrs. John Arbore & Mrs. David Draheim, for and on Behalf of Twin Pines North, Appellees, vs. Cedar Rapids Community School District, in the County of Linn, State of Iowa, Appellant. 1 D.P.I. App. Dec. 74) In doing so, the State Board found that under the authority of Section 285.12, area education agency boards have jurisdiction over discretionary transportation decisions of local school boards when appealed to them and may, therefore, render decisions which are contrary to the local district board's decisions. We know of no change in the law which would alter that result here.

Hopefully, we have been successful in clarifying the respective roles of the District and AEA Boards of Directors in transportation matters and can now address the merits of the appeal currently before us. Most of the 1.6 miles which the students on Heatheridge Drive must travel are much like that found in many other developing suburban areas around the state. Most of the distance is along two- and four-lane residential streets with only occasional sidewalks provided. Pedestrian traffic on such routes is obviously precarious. However, we do not think it equitable to require the various school districts in Iowa to transport students merely because of the lack of good sidewalks. The development and enforcement of appropriate sidewalk ordinances is not within their authority or responsibility.


There is, however, a portion of Glass Road which is unusually hazardous to any pedestrian traffic, especially to children of tender age. The road at that point is a narrow curving two-lane blacktop with nonexistent shoulders. Steep hills rise immediately from both edges of the road requiring pedestrian traffic to enter upon the traveled portion of the road, making for unusually unsafe conditions most of the time and ultra-hazardous conditions in times of inclement weather. We think it inappropriate, the way the street is now constructed, to require elementary-age children, on their way to and from school, to travel that portion of Glass Road as pedestrians. As a result, we find we must overrule the AEA Board in this matter and in effect overrule the District Board.

III.  
Decision

The decision of the Cedar Rapids Community School District Board of Directors and the Area Education Agency 10 Board of Directors in this matter is hereby overruled.

September 21, 1979

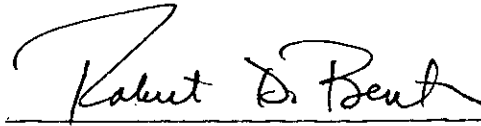
DATE



JOLLY ANN DAVIDSON, PRESIDENT  
STATE BOARD OF PUBLIC INSTRUCTION

August 30, 1979

DATE



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