

IOWA STATE DEPARTMENT
OF PUBLIC INSTRUCTION

(Cite as 2 D.P.I. App. Dec. 209)

In re Ottumwa Community School District	:	
Transportation Appeal	:	
	:	
Ottumwa Community School District,	:	DECISION
Appellee	:	
	:	
v.	:	
	:	
Kerry & Cynthia Burrell, Appellees	:	[Admin. Doc. 564]

The above entitled matter was heard on September 29, 1980, before a hearing panel consisting of Dr. James Mitchell, deputy state superintendent and presiding officer; Mr. David Bechtel, administrative assistant; and Dr. Leonard Gustafson, supervisor, school plant facilities unit. Dr. Mitchell served as presiding officer pursuant to Section 257.22, The Code 1979. The hearing was held pursuant to Section 275.12, The Code 1979, and Chapter 670--51, Iowa Administrative Code. The Appellant was represented by Attorney Thomas Walter, and the Appellees were represented by Attorney Charles Pettit. Area Education Agency 15, (hereinafter AEA) was not represented.

The Appellant is appealing a decision of the AEA Board of Directors reversing a decision of the Ottumwa Community School District (hereinafter District) regarding transportation within the District.

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.

Kerry and Cynthia Burrell live with their three children in a rural area of the District about six miles from the city of Ottumwa. Their two daughters of school age, five and 11 years, ride the school bus on what is called the "Ormanville-Adams" bus route. The route runs approximately one-half mile north of the Burrell residence and the District requires the Burrell's to meet the bus on the approved route. The road is a rural gravel road with no unusual hazards to vehicle or pedestrian traffic not found on other similar rural gravel roads. The road is well traveled by persons commuting to Ottumwa for employment in the early morning and late afternoon hours.

During most of the 1979-80 school year, the Burrell's oldest daughter walked or was given a ride in a family vehicle to meet the school bus at its established stop on the route. In April, 1980, at the request of the Burrells, the school arranged through its bus transportation contractor, Ottumwa Transit Lines, to alter the route and pick up the girl at her driveway. The District acquiesced to the Burrell's request because Mrs. Burrell was pregnant and had difficulty seeing that her oldest daughter met the bus at the pick-up point. The Burrells were advised at the time that the service would be provided only for the remainder of that school year. In order to maintain the route, the bus drove the half mile to the Burrell driveway, picked up the girl, turned around in the driveway and returned to the regular route.

The Burrells appeared before the District Board of Directors at its June 9, 1980 meeting and requested that bus transportation to their driveway be continued for the 1980-81 school year. The Board had before it a memorandum for Mr. Max Miller, the District Board Secretary and Business Manager, outlining the circumstances of the situation and his recommendation that the request be denied. The District Superintendent also recommended that the request be denied. Mr. Miller also made an oral presentation to the Board at the meeting as did the Burrells. After a discussion of the matter, the Board voted four to two to deny the Burrell's request. On June 12, 1980, Mrs. Burrell filed an appeal of the District Board of Director's decision with the AEA Board of Directors.

On July 8, a hearing was held before the AEA Board of Directors on the issue. The District and the Burrells were allowed to fully present their positions and at the conclusion of the hearing, the AEA Board of Directors discussed the matter. A motion to sustain the District Board of Director's decision lost by a vote of four to three. A motion to reverse the District Board decision carried by a vote of four to three. The record does not contain any written decision of the AEA from which the basis of its decision can be determined, nor does the record contain any other evidence which gives a good clue as to the reason or reasons for the AEA Board of Director's decision in this matter.

The District then perfected an appeal of the AEA Board of Director's decision to the State Superintendent of Public Instruction pursuant to Section 285.12. The hearing was postponed until September 29 with agreement of the parties.

The record discloses that through a contract with the Ottumwa Transit Lines, the District has 22 rural school bus routes serving 953 students. About 29 students are currently required by the District to walk distances of less than three-fourths of a mile to meet a school bus on an approved route. Only the Ormanville-Adams route contains "spur routes" where the bus turns around in a driveway and returns back over a portion of the road already traveled. Mr. Miller testified that it only recently came to his attention that the spur routes on the Ormanville-Adams route are serving students who may live less than three-fourths of a mile off the regular route. He stated the current situation involving the spur routes was being reviewed, and dependent upon the outcome of this appeal, those families involved may be required to provide transportation to meet the bus on its regular route rather than being picked up at their driveway. It is the custom and practice in the District to require students living less than three-fourths of a mile off a bus route to provide their own transportation to the regular route.

Mr. Edward Moline, General Manager of the Ottumwa Transit Lines, was not contradicted in his testimony that the extra expense to the District for running a spur route to the Burrell's driveway will be \$2.50 a day. In a 180-day school year, the extra cost to the District would be \$450.00. He also stated that because of the spur route to the Burrell driveway, the length of time required to run the Ormanville-Adams route was increased by about three and one half minutes. Other witnesses felt that the increased length of time would be a little less. Mr. Moline pointed out that several other situations existed on the route similar to that of the Burrells and that if door-to-door service were provided all those families, the length of time necessary to run the route would exceed the maximum legal riding time for elementary students.

Mr. Moline also expressed concern for the safety of the students on the bus should it continue to be required to turn around at the Burrell driveway. He indicated that backing school buses from driveways onto traveled roads was highly undesirable. While the Burrells have indicated they could cooperate in widening their driveway to make it

possible for the bus to turn around in the driveway, both Mr. Moline and Mr. Miller are on record as being highly skeptical that such a plan is feasible due to the topography of the Burrell yard.

Neither would it be feasible to reroute the bus route past the Burrell driveway. Shortly beyond the Burrell driveway to the south is located a limited tonage bridge over which the school bus would be unable to travel.

II. Conclusions of Law

The District in this appeal asks that we reverse the AEA decision at issue here because the decision will result in an increase in the cost of running the District's bus route, create an unsafe turnaround condition not existing on the original route and will likely cause the time for the trip to be in excess of lawful limits. We agree with the District's position.

At least partially to aid the efficient and safe operation of a school transportation system, the legislature has seen fit to grant flexibility to schools in its mandated transportation program by not requiring schools to provide door-to-door transportation service for students. The law clearly authorizes districts to require families of students to transport them up to three-fourths of a mile, without reimbursement, in order to meet an approved bus route. Section 285.1, subsection 2, provides as follows:

Any pupil may be required to meet a school bus on the approved route a distance of not to exceed three-fourths of a mile without reimbursement.

The record clearly indicates that the flexibility for school district operation of transportation programs found in the above quoted provision of law is applicable to the facts presented on the record in this appeal. The record shows that under the AEA decision the District will be subjected to an increased cost of running the Ormanville-Adams bus route to the Burrell's driveway of about \$2.50 a day and \$450.00 for the school year. Even if only a few of the other students currently involved in family-provided transportation to approved bus routes request similar door-to-door transportation, the cost to the District will quickly go higher.

An increase in monetary cost is not the only measure of efficiency important in considerations of school bus routes. Time often plays an important role. Rules of this Department found at 670--22.1(3), Iowa Administrative Code, provide the following:

The riding time, under normal conditions, from the designated stop to the attendance center, or on the return trip, shall not exceed seventy-five minutes for high school pupils or sixty minutes for elementary pupils. (These limits may be waived upon request of the parents.)

While the estimated additional time needed to travel from the established route to the Burrell's driveway, pick up the girls and return to the route varied with the witnesses, the average of times mentioned was about three minutes. While three minutes may not in itself make a great deal of difference in the time needed to run the route, consideration of other persons on the route in similar circumstances must be taken into account. Several other families on the Ormanville-Adams route who are now required to transport their children up to three-fourths of a mile to meet an approved

route would likely request and be entitled to door-to-door service. The extra time needed to provide the Burrells and the other families with door-to-door transportation would surely exceed the maximum riding time requirement of sixty minutes for elementary-age children.

Clearly, cost and time efficiency are not the only factors for consideration in matters of providing school bus transportation. The primary factor must be the safety of the children transported. Having school children, especially those of tender age, walk along a rural gravel road for a half mile in varying conditions of darkness and weather is not ideal. But neither is the prospect of having a school bus containing children back out of a driveway onto such a road without more justifiable circumstances than appear present in the record before us. It must not be forgotten that the Burrells have the option of several alternative means of transporting their daughters to the approved bus route. If they choose to have their daughters walk, the choice is theirs, not the District's.

In its "Affidavit of Appeal," the District alleged that the AEA erred in reversing its decision in this matter because it failed to recognize the absolute discretion of the local District to determine its own bus route. We do not accept that proposition. If we did, the State Superintendent and the State Board of Public Instruction would also be without any ability to rule on this appeal. The jurisdiction of the AEA in transportation appeals is identical to that of the State Superintendent and State Board. See *Arbore v. Cedar Rapids Community School District*, 1 D.P.I. App. Dec. 74.

The Hearing Panel is not unmindful that the Appellant District in this appeal has the burden to show that the AEA decision should be overturned. We conclude that it has carried that burden. This is especially true in the absence in record of a written decision on the part of the AEA Board of Directors or any other explanation of the basis for its decision. We feel that the District has clearly shown that its interests would be substantially more prejudiced by an adverse decision than those of the Burrells.

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

III.
Decision

The decision of the Area Education Agency 15 Board of Directors reversing a decision of the Ottumwa Community School District Board of Directors in the above entitled matter is hereby overruled.

October 8, 1980

DATE

Oct 2, 1980

DATE

Susan M. Wilson
SUSAN M. WILSON, PRESIDENT
STATE BOARD OF PUBLIC INSTRUCTION

James E. Mitchell
JAMES E. MITCHELL
DEPUTY STATE SUPERINTENDENT
AND
PRESIDING OFFICER