

IOWA STATE DEPARTMENT
OF PUBLIC INSTRUCTION

(Cite as 2 D.P.I. App. Dec. 160)

In re Richard Muszynski	:	
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Richard Muszynski, Appellant	:	DECISION
	:	
v.	:	
	:	
Area Education Agency 10, Appellee	:	[Admin. Doc. 562]

The above entitled matter was heard on July 9, 1980, before a hearing panel consisting of Dr. James E. Mitchell, deputy state superintendent and presiding officer; Mr. Gayle Obrecht, director, administration and finance division, and Mr. Carl Miles, director, field services and supervision division. Dr. Mitchell served as presiding officer pursuant to Section 257.22, The Code 1979. Richard Muszynski was present and presented argument and evidence on his own behalf. The Cedar Rapids Community School District, (hereinafter District) was represented by Otto Wiedersberg, Board Secretary, and Area Education Agency 10, (hereinafter AEA) was not represented. The hearing was held pursuant to Section 285.12, The Code 1979 and Chapter 670--51, Iowa Administrative Code.

The Appellant appealed the decision of the AEA Board of Directors affirming a decision of the District Board of Directors regarding school bus transportation.

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.

During the 1979-80 school year, and for the preceding seven years, the residents of Glenbrook Cove, an area of the City of Cedar Rapids, were provided free school bus transportation by the District for the elementary-age children attending the District's Kenwood Elementary School and St. Matthew School, a nonpublic school. The free bus transportation was provided because the only appropriate route to both schools from the Glenbrook Cove area at that time exceeded the two mile statutory requirements of Section 285.1, subsection 1, paragraph a. That paragraph states as follows:

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

Some time during the last school year, however, additional development in the area resulted in the construction of a street which provided a more direct route to both Kenwood and St. Matthew schools. Subsequent to the completion of the new street, District officials determined that the new school route available to students and parents was less than two miles, and that under existing District policy, no school bus transpor-

tation should be provided the residents of the Glenbrook Cove area.

The Appellant, a resident of the effected area, appeared before the District Board of Directors at its March 23, 1980 meeting, and petitioned the Board to continue the busing of the students on the same basis as it then existed. His basis for the request was the existance of hazardous conditions for children on a portion of the proposed new school route. The Board President directed that the issue be placed on the Board agenda for its April 14 meeting.

The Appellant again appeared before the District Board on April 14 and presented testimony, photographs and slides which emphasized the hazardous condition of a portion of the proposed school route and requested that the then existing and longer school route be determined the "safest and most passable" route from the Glenbrook Cove area to the schools. The Board President directed the Board Secretary to request a determination by the AEA as to which of the two routes is the "safest and most passable route."

Mr. Muszynski again appeared before the District Board of Directors to present his views on May 12, 1980. It was reported to the Board that the AEA had determined the "safest and most passable" route was the newer, shorter route and the District Administration recommended adherence for the Board's Regulation 901.1, which would result in no school transportation being provided the Glenbrook Cove area. The District Board voted to adhere to its regulation and not provide school transportation to the area during the 1980-81 school year.

Mr. Muszynski perfected an appeal of that decision to the AEA and appeared for a hearing before the AEA Board of Directors on June 16, 1980. Following the hearing and discussion and deliberation, the AEA Board voted to deny Mr. Muszynski's appeal. Mr. Muszynski then perfected an appeal to the State Superintendent of Public Instruction pursuant to Section 285.12, The Code 1979.

After reviewing the record in this matter, the Hearing Panel concludes that the safest and most passable route is that determined by the School District and AEA Boards of Directors. However, the Hearing Panel also finds that the approximately one block portion of the route on 40th Street from the railroad tracks to and including the intersection of 40th Street and First Avenue presents an ultrahazardous situation for school children of tender age. The area is a heavily commercialized area and there are no sidewalks on either side of the street. On the west side of the street, children going to school are first met with a narrow walkway between the street curb and a public utility building. The building has two steep roadways, one on either side, as access to several businesses' parking lots. The roadways share a steep incline and patrons of those businesses "gun" their vehicles to the crest of the driveway. All the time their vision for pedestrians and traffic is totally obstructed either to the right or left because of the location of the structure itself. Next, children walking on the west side of the street are forced to walk in the street as a result of the apparent encroachment of cars parked in the parking lot of a restaurant. Testimony indicated a public easement of eight or nine feet on that side of the street, but photographs in the record taken in February, 1980, clearly indicate that much less than that is available for pedestrian traffic. The available pedestrian area appears to be less than two feet wide and interrupted by occasional street signs and utility poles. Photographs and slides in the record clearly portray the hazardous condition for pedestrians on the west side of the street, especially in winter with snow from the street and parking lots piled between the two.

On the east side of the street, the situation for pedestrian traffic is worse. While testimony indicated that a public easement exists, of approximately eighteen feet, the easement is apparently encroached upon by a car dealership and its patrons. The first hazard presented to a student walking from Glenbrook Cove to school on the east side of 40th Street is a large unfenced parking lot used for storage of new and used cars and

parking for the car dealership's repair department. Apparently about 100 vehicles, including trucks of all sizes, are repaired each day, and the slides and photographs in the record indicate clearly that little consideration is given to pedestrian traffic by the persons parking the vehicles. Immediately north of the parking lot and apparently very near the lot line are several service bay doors through which vehicles pass to be repaired. Again, photographs and slides in the record show that little or no regard is given to pedestrian traffic adjacent to the service bay area. Service equipment, oil containers, garbage canisters and other items frequently block a pedestrian's route. Immediately north of the service bay is a loading dock for the car dealership. Photographs and slides in the record show clearly that trucks backed up to that dock totally block pedestrian traffic between the street and the building and even block a significant portion of the street. Semitrailer trucks nearly block the entire street. Any pedestrian attempting to go around a truck unloading in the dock area would have to traverse the middle of the street to pass by.

Whichever side of the street a young student might take going north on 40th Street, he or she must cross the heavily-traveled intersection with First Avenue. First Avenue is a main thoroughfare in the city and is five lanes wide. The traffic signal at the intersection is set for northbound traffic on 40th Street for 15 seconds on green, three seconds on yellow and 65 seconds on red. There is no pedestrian crossing signal. In addition to having a limited time for crossing the wide street, a student would have to contend with vehicles turning right on red lights and vehicles having difficulty negotiating the unusual angle at which the streets intersect.

The two businesses on either side of the street which students walking to school must pass immediately after crossing First Avenue present additional hazards. One is a drive-in bank and the other is a gasoline service station. Both have large drive-ways with considerable traffic.

II. Conclusions of Law

From the materials in the record, we feel that the issue before us was best summed up in the presentation of AEA Administrator Dwight Bode to the AEA Board at the hearing before the AEA Board. The issue as phrased by Mr. Bode is as follows:

The question is whether this route that we identified as the safest, most passable, is so dangerous that transportation should be provided for the safety of the children.

The District Board, acting under its policy, had responded to the issue in the negative and that decision was affirmed by the AEA Board. We disagree with their positions. From the record we conclude that the approximately one block long portion of 40th Street between the railroad tracks and First Avenue, combined with the intersection of 40th Street and First Avenue are so inherently dangerous, in their present condition, to students in grades kindergarten through six, that we must overrule the AEA Board of Directors and in effect, the District Board of Directors in this matter.

As stated previously by the State Board of Public Instruction in In re Robert Marovich, 2 D.P.I. App. Dec. 50, it does not appear, at first glance, to be equitable to require school districts to be burdened by the lack of safe pedestrian routes to and from school which arise due to the lack of proper development or enforcement of laws and ordinances. These are usually matters over which school boards have no legal responsibility or authority. That is perhaps why the State Board of Public Instruction has, in the past, determined that only in unusual or extremely hazardous situations will it overrule area education agencies on questions of discretionary transportation.

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parking for the car dealership's repair department. Apparently about 100 vehicles, including trucks of all sizes, are repaired each day, and the slides and photographs in the record indicate clearly that little consideration is given to pedestrian traffic by the persons parking the vehicles. Immediately north of the parking lot and apparently very near the lot line are several service bay doors through which vehicles pass to be repaired. Again, photographs and slides in the record show that little or no regard is given to pedestrian traffic adjacent to the service bay area. Service equipment, oil containers, garbage canisters and other items frequently block a pedestrian's route. Immediately north of the service bay is a loading dock for the car dealership. Photographs and slides in the record show clearly that trucks backed up to that dock totally block pedestrian traffic between the street and the building and even block a significant portion of the street. Semitrailer trucks nearly block the entire street. Any pedestrian attempting to go around a truck unloading in the dock area would have to traverse the middle of the street to pass by.

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As a practical matter, however, the District appears to be in the best position to work out a timely solution to a difficult problem. Although school districts may not be legally responsible for unsafe pedestrian conditions, they are often best suited to do something about it and to recover their expenses from the parents. That portion of Section 285.1 which authorizes school districts to provide transportation to students not otherwise legally entitled to it also authorizes districts to charge the pro rata cost of such discretionary transportation.

Section 285.1, in relevant part, 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.

In conclusion, we feel that the District is in the best position to provide a safe conveyance to and from school at little or no loss to itself and, therefore, the District Board should provide the opportunity to the residents of the Glenbrook Cove area to have their children ride the school bus to school until the existing hazards are corrected. A determination of appropriateness of charging the parents for such transportation should remain with the District Board of Directors.

III.
Decision

The decision of Area Education Agency 10 Board of Directors in this matter is hereby overruled.

September 12, 1980
DATE

July 23, 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