

IOWA STATE DEPARTMENT
OF PUBLIC INSTRUCTION

(Cite as 2 D.P.I. App. Dec. 139)

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| In re Tamara Gavin | : | |
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| Mr. & Mrs. Bernard Gavin, Appellants | : | DECISION |
| | : | |
| v. | : | |
| | : | |
| Wellsburg Community School District, Appellee | : | [Admin. Doc. 529] |

The above entitled matter was heard on May 6, 1980, before a hearing panel consisting of Dr. Robert Benton, state superintendent and presiding officer; Mr. Dwight Carlson, director, school transportation and safety education division; and Mr. Gayle Obrecht, director, administration and finance division. Attorney T. J. Heronimus represented the Wellsburg Community School District (hereinafter District), and Mr. and Mrs. Bernard Gavin were present and presented the facts and arguments involving their appeal. The hearing was held pursuant to Chapter 290, The Code 1979, and Chapter 670--51, Iowa Administrative Code.

The Appellants appealed a decision of the District Board regarding a restricted driver's license for their daughter and the school policy related thereto.

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.

Under the authority of Section 321.194, The Code 1979, a minor between the ages of 14 and 18 years of age, upon a showing of "necessity," may be granted a restricted driver's license. Such a license entitles the holder to operate a motor vehicle between the hours of 7:00 a.m. and 6:00 p.m. for the purpose of attending school, or at any other time when accompanied by a parent licensed to drive. At the beginning of the 1979-80 school year, the District policy or practice was to have the District Superintendent meet with the student's parents to verify the "necessity" for a restricted driver's license. If the situation indicated a need for a restricted driver's license, the Superintendent was authorized to sign a State Department of Transportation form entitled, "Affidavit of Necessity for School License." District Superintendent Michael Book had done so on several occasions.

In mid-October, 1979, Mrs. Bernard Gavin approached Mr. Book and asked that he sign the form attesting to the "necessity" of granting Mrs. Gavin's daughter, Tamara, a restricted license. Mr. Book told Mrs. Gavin that the District Board was in the process of revising its official policies and that he would prefer to delay his signing of the form

until the Board completed consideration of the matter of restricted licenses. Mrs. Gavin acquiesced in his expressed wish.

The next District Board meeting was November 5, 1979. The minutes of the meeting are not very detailed on the points at issue here, and the record does not adequately disclose the detailed unfolding of events. Apparently, the District Board considered the adoption of a large number of new policies, including Article VI which was entitled, "Policies Relating to Students." At the point during the meeting when discussion focused on Article VI, Mr. Book informed the Board that several patrons and law enforcement officers had complained to him that some holders of the restricted license were violating the terms of its issuance. He suggested that District Policy be amended to require registration of the vehicles to be driven by students with restricted licenses and that a copy of the registration be filed with local law enforcement officials. Mrs. Gavin was then granted an opportunity to address the Board regarding the policy on restricted licenses. The Board voted to adopt Articles IV, V and VI of the proposed policies. While the District Board minutes do not reflect the exact language of Mr. Book's recommended language change or the language of the Policy as adopted by the Board, Section XXI of Article VI of District Policy currently reads as follows:

School driver permits will be issued by the Superintendent of Schools upon satisfactory evidence of need by the parents of the students making such a request. A conference with the high school principal must be held with the student and at least one parent. A form registering the vehicles to be commonly used will be completed and copies will be filed with the school district and local law enforcement officials.

Prior to the November 5 Board meeting, the District policies were in a deplorable condition, in the opinion of Superintendent Book. They had not been revised for many years, and they were not contained in any one notebook or file. He testified that subsequent to the filing of this appeal, his research disclosed that the most recent set of Board policies available was dated 1959. Under the 1959 policies, a new policy could not be adopted or an existing policy amended during the meeting at which it was first introduced. Adopting and amending District Board policy required two readings. Mr. Book testified that he did not know if an official change in District Policy had occurred subsequent to 1959 and had been misplaced, or if the 1959 Policy was still technically District Policy. He did state, however, that his research of Board minutes indicated only one reading had been used for about the last 20 consecutive Board policy adoptions. (Article X of the current Board Policy requires two readings for the adoption and amendment of Board Policy.) Whatever the actual Board Policy on adoption of new policy, Mr. Book and the District Board acted on the basis that only one reading of Board policy was required for the adoption of policy. It was explained by Mr. Book at the hearing, however, that it was the practice of the District Board to have all policy statements approved by the Board reviewed by the Board's Attorney and then later resubmitted to the Board, accompanied by the Attorney's suggestions, for final action.

Dr. Gavin approached Mr. Book later in November, after the November 5 meeting, and requested that Mr. Book sign an affidavit for issuance of a restricted license for his daughter. When Mr. Book explained the District Policy, as quoted above from Article VI, Section XXI, Dr. Gavin objected to the provisions providing for registration of the vehicles with the school and with local law enforcement officials and refused to comply with the Policy. Dr. Gavin requested that he be granted a place on the agenda of the December District Board meeting.

Dr. Gavin appeared at the December 3 District Board meeting and expressed his opposition to the Policy in question. The Board took no official action regarding the Policy. Dr. Gavin then requested that he and his legal counsel be placed on the agenda for the next regular Board meeting.

Dr. & Mrs. Gavin appeared at the January 7, 1980, District Board meeting and once again raised objection to its provisions regarding registration of vehicles. Once again the Board took no action upon their specific request.

The Board did, however, take action at the January 7 meeting, with regard to Articles IV through X, including Article VI, of the revised Board policies. The minutes of the January 7, 1980 meeting, read in relevant part as follows:

Articles IV through X of the revised Board policies were adopted in their final form as recommended by school attorney, T. J. Heronimus. [emphasis added]

In this particular instance, the school's Attorney did make suggestions regarding Article VI which were accepted by the Board in its action of adoption "in their final form" on January 7, but no changes were suggested or made in Section XXI of Article VI.

In addition to Section XXI of Article VI, at least one other District Policy reflects upon information regarding student records kept by the school and the conditions under which they may be released. The provisions of Section VII of Article VI, which deal with the general policy of release of student records, reads as follows:

Records or files of students will not be released without the written consent of parents (or in the case of a student who has reached 18 years of age, the consent of the student), other than to school officials, including teachers in the school district who have legitimate education interests, or to officials of other schools in which the student intends to enroll.

The superintendent will establish appropriate procedures for granting access to the student's school records, and to classify, maintain, and release student records.

An employee of the school district will not furnish lists of names and/or addresses of pupils enrolled in the Wellsburg School District to any non-school group, organization, or private individual.

The Superintendent of Schools may authorize the release of senior class rosters to colleges and universities, military organizations, and local organizations unless the student disapproves of such release.

Due to the nature of the matter before it, the Hearing Panel feels that it is appropriate to take official notice, pursuant to Section 17A.14, subsection 4, that the records of the Department of Public Instruction clearly show that the District is a recipient of funds under various federal programs for which the United States Commissioner of Education has administrative responsibility and further finds that fairness to the parties will not be jeopardized by not providing an opportunity to contest these facts.

The Hearing Panel further finds that the District, as a recipient of these federal funds, is an "educational agency or institution" as defined in 20 U.S.C. §1232g and 45 C.F.R. §99.3, and as such, is subject to the provisions of the Family Educational Rights and Privacy Act found at 20 U.S.C. §1232g and regulations promulgated thereunder found at 45 C.F.R. §99.1, et seq.

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The Hearing Panel further finds that the District, as a recipient of these federal funds, is an "educational agency or institution" as defined in 20 U.S.C. §1232g and 45 C.F.R. §99.3, and as such, is subject to the provisions of the Family Educational Rights and Privacy Act found at 20 U.S.C. §1232g and regulations promulgated thereunder found at 45 C.F.R. §99.1, et seq.

II.
Conclusions of Law

The Appellee filed a written "Motion to Dismiss," which was renewed orally at the hearing, on grounds the appeal was not timely filed. In order for jurisdiction to be vested in the State Board of Public Instruction in appeals under Chapter 290, a "person aggrieved by any decision or order of the board of directors of any school corporation must file an appeal within thirty days after the rendering of such order or decision." In the appeal currently before us, Dr. and Mrs. Gavin desire to have us rule on the validity of the District's current policy regarding restricted driver's licenses generally, and the refusal of District officials to sign their daughter's Affidavit of Necessity specifically. We decline to do the latter and hereby grant the "Motion to Dismiss" to that portion of the appeal related specifically to District officials' refusal to sign the Affidavit. There is nothing in the record to indicate that the District Board of Directors has ever rendered a "decision or order" regarding Tamara Gavin's "Affidavit of Necessity for School License."

The issue of jurisdiction regarding the validity of the District Board Policy is not so easily resolved. The Gavins filed their appeal on January 28, 1980. Thus, if they appealed a decision of the District Board rendered at the January 7 meeting, the appeal was timely filed and jurisdiction exists. If the decision appealed, however, was actually made on November 5 and not January 7, the appeal was not filed within thirty days and jurisdiction does not exist. Whether it is considered that the District Policy on November 5 required two readings (November 5 and January 7), under the existing but "lost" policy so that the final action under Board Policy occurred on January 7, or whether the action of the Board on January 7 is considered a second separate action reaffirming the previous action of November 5 as modified as a result of the Board Attorney's suggestions, the result is the same. From either analyses, however, we conclude that the appeal was timely filed and hereby overrule the Appellee's "Motion to Dismiss" regarding that portion of the appeal dealing with the validity of the District Policy in question.

The question of validity of the District Policy raised before us by the Gavins poses a number of issues. The Gavins allege, in part, that the policy exceeded the authority of the District Board, that the policy arbitrarily discriminates against holders of the restricted driver's permit and that it violates their family's right to privacy. It is the last point that concerns us the most and upon which our decision turns.

It should be remembered that the District Policy at issue here has three components. We take no issue with the component which requires that parents or guardians of students requesting "Affidavits of Necessity for School License" meet with school officials. This meeting will allow District officials the opportunity to examine the facts necessary to make a determination of "necessity" and to make students aware of their responsibilities. The second element, that of registration of vehicles driven by students with restricted license, does cause us some concern. We are unable to determine any good school-related reason for such registration. However, because the issue was not given a great deal of attention at the hearing, it is possible that some redeeming value to such a requirement exists, and we are reluctant to invalidate a district policy under such circumstances. The third provision, however, the turning over of the registration lists to law enforcement authorities is, we believe, contrary to other District policies regarding release of student records and the Federal Educational Rights and Privacy Act.

In 1974, the Congress of the United States enacted the Family Educational Rights and Privacy Act which, in part, greatly restricts the release of information contained in "education records" maintained by school districts which receive federal funds. "Education records" is defined, in part, in 20 U.S.C. §1232g as "those records, files, docu-

ments, and other materials which -- (i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution." Thus, it appears that registration lists of family vehicles driven to school by students with restricted driver's licenses which are required by the District Board Policy are "education records."

The question, then, arises as to whether registration lists of family vehicles driven by students with restricted driver's licenses can be turned over to law enforcement officers pursuant to District Policy without the prior written consent of the student's parents or guardians. We think the answer is in the negative. In reviewing the statutory and regulatory provisions for the exceptions to the requirement of prior written consent, we do not find any which would be applicable to this situation. Our conclusion is that the District receives Federal education funds and, therefore, cannot generally release personally identifiable information, such as the names of students with restricted driver's licenses and the registration numbers of the vehicles they drive, without the prior written consent of the parents. (The regulations do not allow a school district to require parents and students to waive their rights. 45 C.F.R. §99.7.) Because the third component of Section XXI of Article VI conflicts with the Federal statute and regulations, we must conclude that it is invalid.

We also note that in Section VII of Article VI of the District's policies is a policy regarding student records. That policy generally appears to be in conformity with the Federal Educational Rights and Privacy Act. It thus conflicts with the provision of Policy Section XXI of Article VI, which requires that copies of registration documents kept by the school with names of students with restricted licenses and the vehicles they drive be turned over to law enforcement authorities. The student record policy says, in part, that school employees may not furnish lists of student names or addresses "to any non-school group, organization, or private individual or group." Since law enforcement authorities fall into one or more of the categories of "non-school group, organization or private individual or group" to whom school employees may not release information, we conclude that the two policies are in irreconcilable conflict.

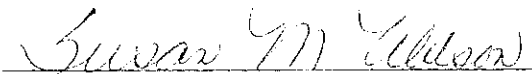
Because we feel that the above discussion is sufficiently dispositive of the issue of the validity of District Policy, Article VI, Section XXI, we do not feel compelled to specifically address the other issues raised by the Gavins.

III. Decision

The decision of the Wellsburg Community School District Board of Directors in this matter is hereby overruled. Appropriate costs under Chapter 290, if any, are hereby assigned to the Appellee.

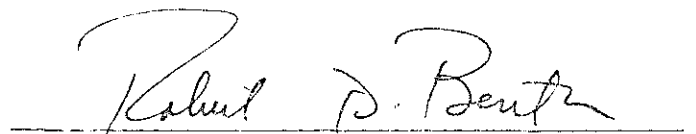
June 27, 1980

DATE


SUSAN M. WILSON, PRESIDENT
STATE BOARD OF PUBLIC INSTRUCTION

June 17, 1980

DATE


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