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STATE OF IOWA • DEPARTMENT OF PUBLIC INSTRUCTION

GRIMES STATE OFFICE BUILDING • DES MOINES, IOWA 50319

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DECLARATORY RULING #34

(Cite as 1 D.P.I. Dec. Rul. 93)

June 27, 1984

Mr. Edgar Bittle  
AHLERS, COONEY, DORWEILER, HAYNIE,  
SMITH & ALLBEE  
300 Liberty Building  
Sixth at Grand  
Des Moines, Iowa 50309

Dear Mr. Bittle:

On May 21, 1984, you filed on behalf of the Newton Community School District, a "Petition For Declaratory Ruling." The issues presented in the petition center around a proposed pupil transportation policy. The proposed policy provides that all elementary and high school students residing outside of the corporate limits of towns located in the District will be entitled to free transportation, and elementary students residing within the corporate limits of Newton, but residing more than two miles from their designated attendance center and high school students residing more than three miles from their designated attendance center will be entitled to free transportation. Elementary and high school students residing within the corporate limits of Newton, but less than two and three miles respectively from their designated attendance center, will not be entitled to school bus transportation. Parents of students not entitled to free school transportation may apply to the Transportation Review Committee to have transportation provided for a fee charged.

The Transportation Review Committee has, among other duties under the proposed policy, the duty to establish criteria for assessing eligibility requirements for school transportation services for students not entitled to free transportation under the policy. The Review Committee will also review requests for transportation from parents of students not entitled to free transportation. There is no provision in the proposed policy for free transportation of students, except those entitled to transportation under the policy. Thus, all students living within the corporate limits of Newton and less than two miles from the designated attendance center for elementary students and three miles for high school students, will be provided school transportation only upon a showing of need, and in all such cases, will be charged a fee for the transportation. The opportunity

to establish need is provided before the Review Committee based upon criteria developed by it pursuant to proposed rule Section 4.1.2(2). That proposed subrule reads as follows:

4.1.2(2) Develop criteria for assessing eligibility requirements for students entitled to optional transportation for a fee based upon conditions such as speed of traffic, volume of traffic, walkway, traffic signals, distance walked, crossing railroad tracks and number of trains, and when requested, determine their application.

Section 5.1 of the proposed policy clearly states that "fees for transportation services shall be charged to students not entitled to free transportation."

You indicate that the proposed policy will eliminate free transportation to some students residing in the corporate limits of the city of Newton who now receive free school transportation services. The parents of some of those students have apparently been previously involved in an appeal of a similar transportation issue to Area Education Agency 11. As a result of that appeal, the students have been provided free school transportation. Under the proposed policy, they will no longer be entitled to free transportation.

The specific questions you raise in this situation are as follows:

1. May the school corporation charge a fee for optional transportation provided to students who reside within the corporate limits of the City of Newton but inside the two and three mile limits?
2. May the school corporation provide free transportation to students who reside outside the corporate limits of Newton, Kellogg and Lambs Grove, even though they reside within two and three miles from a designated attendance center?
3. May the school corporation charge a fee for transportation provided to students who reside within the corporate limits of the City of Newton but who reside within two and three miles from a designated attendance center where transportation is provided, based upon the criteria in Policy section 4.1.2(2)?

The answer to all three of the questions posed by you is answered generally in the affirmative. The Code of Iowa section 285.1, subsection 1, 1983, reads in relevant part as follows:

285.1 When entitled to state aid.

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.

b. High school pupils shall be entitled to transportation only if they live more than three miles from the school designated for attendance.

For the purposes of this subsection, high school means a school which commences with either grade nine or grade ten, as determined by the board of directors of the school district or by the governing authority of the nonpublic school in the case of nonpublic schools.

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. [emphasis added]

The above quoted subsection establishes statutory entitlement to school transportation for elementary students residing more than two miles from school and high school students residing more than three miles from school. The proposed policy does not appear to conflict with that entitlement.

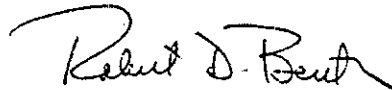
The above quoted subsection also grants considerable authority to local boards to provide transportation for "some or all" students not entitled to transportation by statute. It provides for additional broad discretion in the determination of fees to be paid by parents of students provided optional transportation (so long as the fee does not exceed the pro rata cost of the transportation provided). The terms of the proposed rule appear to be in conformity with those statutory provisions.

Thus, in the general sense, the proposed policy provisions related to your specific questions do not appear to conflict with state statutes. However, even though the District Board is legally authorized to promulgate the rules at issue in this declaratory ruling, its acts regarding specific issues related to transportation remain subject to review by the Area Education Agency Board of Directors pursuant to an appeal filed under the authority of Section 285.12. For instance, a parent who is dissatisfied with a decision of the Transportation Review Committee regarding eligibility may appeal that decision to the local board of directors. (Rule 4.1.3) A decision of the local board rendered on such appeals is then subject to review by the Area Education Agency. The Board of Directors of the Area Education Agency on appeal then has the same discretionary prerogatives as the local board. See Appeal of Cedar Rapids Community School District, 1 D.P.L. App. Dec. 74.

Issues related to the fee charged for optional transportation could be reviewed by the AEA Board of Directors, too. For instance, a parent residing in an area provided optional transportation could request, on the basis of indigency, that the local board reduce or waive the fee charged for optional transportation. If the Board refused to reduce or waive the fee, the issue would be subject to an appeal to the AEA Board and its discretionary review.

In summary, a local school board of directors has the authority to promulgate a policy establishing the criteria for determining when students not entitled by law to free school transportation may be provided optional school transportation, that a fee will be charged for such optional transportation and that certain groups of students not entitled by law to free school transportation may be provided free school transportation. However, the exercise of such authority on the part of a board of directors does not preclude outside review of specific issues arising under the policy.

Sincerely yours,



Robert D. Benton, Ed.D.  
State Superintendent of  
Public Instruction

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