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DECLARATORY RULING #30
(Cite as 1 D.P.I. Dec. Rul. 71)

September 17, 1982

Ms. Iris Kimball, Board Secretary
Keokuk Community School District
P. O. Box 128
Keokuk, Iowa 52632

Dear Ms. Kimball:

Your request for a Declaratory Ruling on behalf of the Board of Directors of the Keokuk Community School District was filed in my office on August 25, 1982. In your request you describe a factual situation where the parents of children attending a nonpublic, non-approved school in the Keokuk School District have requested that the District provide school bus transportation between the childrens' home and school under the authority of Section 285.10, subsection 9, The Code 1981. As I understand the situation, the transportation requested is to be provided the children attending the nonpublic, non-approved school at the same time the school bus is being used to transport students attending public and approved nonpublic schools between their homes and schools.

While your request raised a general question and a number of detailed questions, it is the general question phrased as a summary statement which is dispositive of your request for Declaratory Ruling and the one to which I will direct my response. That summary statement of the issues you present reads as follows:

The Board has requested a declaratory ruling as to whether the Board of Education of Keokuk has, in fact, the authority to allow a student of a nonapproved, nonpublic school to ride a regular route bus at the pro rata cost of transportation and the provisions which would be applicable.

The issue you present is framed within the provisions of Chapter 285, The Code 1981. Section 285.1 established an entitlement to transportation provided by the public school district to students of public and nonpublic schools who reside more than a specified distance from their designated attendance centers. Section 285.16, however, defines "nonpublic school"

as those nonpublic schools which have achieved approval status from the Department of Public Instruction under the provisions of Section 257.25. The obvious legislative goal was to restrict the entitlement of public school bus transportation to students of public and approved nonpublic schools. Students of nonpublic schools which have not achieved approval status under the provisions of Section 257.25 have no entitlement to school bus transportation under the provisions of Chapter 285.

The issue which you present for declaratory ruling is whether the Board of directors of a public school has discretionary authority to provide public school bus transportation to students attending nonpublic, nonapproved schools. The provision of the Code presented to the Keokuk Board as authority for providing public school bus transportation for students attending a nonpublic, nonapproved school while the same busses are providing transportation for public school students, Section 285.10, subsection 9, actually prohibits such a result. Section 285.10, subsection 9, reads as follows:

In the discretion of the board, furnish a school bus and services of a qualified driver to an organization of, or sponsoring activities for, senior citizens, children, handicapped or other persons and groups in this state. The board shall charge and collect an amount sufficient to reimburse all costs of furnishing the bus and driver except when the bus is used for transporting pupils to and from extracurricular activities sponsored by the school. A school bus shall be used as provided in this subsection only at times when it is not needed for transportation of pupils. [emphasis added]

As you can see, the last sentence of that subsection precluded the simultaneous transportation of students of public and approved nonpublic schools between their homes and schools and "senior citizens, children, handicapped or other persons and groups in this state." It is quite clear to me that a request to transport students of a nonpublic, nonapproved school while students of approved public and nonpublic schools are being transported between their homes and schools cannot be granted under the authority of Section 285.10, subsection 9.

I would be remiss, however, if I did not direct your attention to Section 285.1, subsection 21. That subsection reads as follows:

Boards in districts operating buses may in their discretion transport senior citizens, children, handicapped and other persons and groups, who are not otherwise entitled to free transportation, and shall collect the pro rata cost of transportation. Transportation under this subsection shall not be provided when the school bus is being used to transport pupils to or from school unless the board determines that such transportation is desirable and will not interfere with or delay the transportation of pupils.

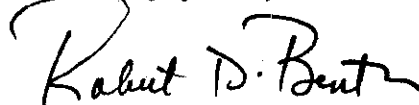
From your reading of that subsection, you can readily determine that transportation such as that requested by the parents of children attending a nonpublic, nonapproved school may be provided at the discretion of a local school district's board of directors when several conditions are satisfied. A board

of directors must determine that "such transportation is desirable and will not interfere with or delay the transportation of pupils," and the board "shall" collect the pro rata cost of the transportation. When those conditions are met, a local board of directors is authorized to provide for the transportation of children attending a nonpublic, non-approved school. Obviously, the costs of transporting children attending a nonpublic, nonapproved school are not subject to state reimbursement under the provisions of Section 282.2.

I would remind you that the relatively recent addition of Section 285.16 to the transportation chapter in the Code is indicative of legislative intent to clarify the lack of entitlement of public school bus transportation to students attending nonpublic, nonapproved schools. Because of this, I would caution you that it is advisable to place a restrictive interpretation on the terms of Section 285.1, subsection 21, especially the terms "desirable," "interfere" and "delay." I think, for instance, that extending a route substantially or an extended time spent loading or unloading students at a nonpublic, nonapproved school could well "interfere with" and "delay" the transportation of students entitled to the transportation to such an extent that a local board of directors could be determined to have abused its discretionary authority under Section 285.1, subsection 21.

In summary, I am of the opinion that Section 285.10, subsection 9, does not provide discretionary authority for the board of directors of a public school district to provide school bus transportation between students' homes and schools for students attending a nonpublic, nonapproved school while it is also transporting students of public schools and approved nonpublic schools. Authority for such transportation, based upon compliance with several conditions, is found, however, in Section 285.1, subsection 21.

Sincerely yours,



Robert D. Benton, Ed.D.

State Superintendent of Public Instruction

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