

IOWA STATE DEPARTMENT
OF PUBLIC INSTRUCTION

In re Lawrence T. Donovan :
:
Lawrence T. Donovan :
Appellant :
:
v. :
:
Estherville Community School District :
Appellee :

DECISION

[Admin. Doc. 367]

This transportation appeal came for hearing before a hearing panel consisting of Dr. Robert Benton, state superintendent and presiding officer, Dr. Richard Smith, deputy state superintendent, and Dr. LeRoy Jensen, associate state superintendent, on December 18, 1975, in the State Board of Public Instruction Conference Room in Des Moines, Iowa. The Appellant, Lawrence T. Donovan, and the Appellee, the Estherville Community School District, were not present or represented at the hearing. The parties stipulated in writing that the appeal be submitted on the record made before the Lakeland Area Education Agency Board of Directors (hereinafter AEA 3), and that no further evidence or exhibits be offered at the hearing before the Hearing Panel unless specifically requested by the Panel. Stipulation was also made that written briefs and arguments would later be filed with the Hearing Panel. The Hearing was convened pursuant to Section 285.12, The Code 1975, and Departmental Rules Chapter 670--51, Iowa Administrative Code. The stipulations by the parties were recognized and accepted by the Hearing Panel which then adjourned until receipt of the written briefs and arguments. Attorneys for the parties later waived the filing of written briefs and arguments. The School District was represented by Francis Fitzgibbons and Mr. Donovan was represented by William Ridout.

The evidence submitted to the Hearing Panel consisted of several photographs, a map of Estherville and a recording of the hearing before the AEA 3 Board of Directors. The record indicates the following circumstances led to this appeal. Lawrence T. Donovan and his attorney, William Ridout, appeared at the September 15, 1975, meeting of the Estherville Community School District Board of Directors and requested that the Donovan children be provided bus transportation even though the family resided within the statutory limits for mandatory transportation. After taking the matter under advisement, the Estherville Board denied the request on October 13, 1975, by a vote of three to one, with one abstention. The matter was appealed to AEA 3 on October 21, 1975, on the basis that the action of the Estherville Board of Directors was without rational basis. On November 21, 1975, the AEA 3 Board of Directors heard Mr. Donovan's appeal and found, by a unanimous vote, that actions of the Estherville Community School District Board of Directors were not arbitrary or capricious but were within its statutory authority and discretion.

Mr. Donovan made a timely appeal of the decision of the AEA 3 Board of Directors to the State Superintendent of Public Instruction pursuant to Section 285.12, The Code 1975.

I.
Findings of Fact

The Hearing Panel finds that the State Superintendent of Public Instruction, State Board of Public Instruction and the Hearing Panel have jurisdiction over the parties and the subject matter involved in this appeal.

Mr. Donovan and his family reside approximately 0.2 miles inside the city limits of Estherville. One child of the family attends the high school which is approximately 2.4 miles from the Donovan residence, while the other child attends the middle school which is approximately 1.6 miles from the Donovan home. The Donovan residence is located near the top of a hill on a hard-surfaced road with a narrow shoulder and numerous curves. There was testimony to the effect that the road and shoulder are dangerous for walking due to the curves and the unwillingness of motorists to maintain the 25 m.p.h. speed limit. The Donovan family had lived in their present home for approximately three years prior to the time they requested the School District to provide discretionary transportation for their children.

At the time Mr. Donovan contacted the Appellee School District regarding transportation for his children, five other families in the District living within the city limits and within the mandatory transportation distance from an attendance center received school bus transportation. However, in order to eliminate any discriminatory application of school policy regarding school bus transportation, the Estherville Board of Directors at the October 13, 1975 meeting, reviewed and amended the District's transportation policy. At that same meeting, the Board considered the recommendations of Superintendent Perry Uhl regarding discretionary bussing of the Donovan children and the families which had previously been furnished bus transportation. As a result of the recommendations and accompanying discussion, the Board of Directors decided to cease transportation privileges, after a sufficient adjustment time, for two families previously transported by the District and to continue transporting the children of three families not statutorily entitled to transportation. All three of these families reside in the southern part of the city of Estherville. Their only direct access to schools in the city is across a narrow bridge which carries State Highway 4. The record of the hearing before the AEA 3 Board shows that the bridge is dangerously narrow and school buses crossing the bridge have been forced to drive so close to the bridge railings that they have sideswiped the bridge and lost rearview mirrors. The area south of town is industrial in nature, and the bridge carries a heavy flow of traffic, especially at times students would be walking to and from school. There was evidence that a traffic count was made by the State Highway Commission on this part of State Highway 4 in 1974 resulting in a count of 2,490 cars per day. This compares to a car count in the same year on the road which goes by the Donovan residence of 312 cars per day. The latter count was taken about one-half mile from the Donovan home, near a public park entrance. The Donovan family counted the vehicles passing their home for two unspecified days between the hours of 7:30 and 8:30 a.m. That count resulted in counts of 47 and 67 vehicles. The Estherville Superintendent testified that the road past the Donovan home did have safety problems, but that it was safer than many other streets in the city. The AEA 3 Board had before it a map of the city of Estherville and photographs of the road which the Donovan children travel to get to school as well as photographs of the route over the highway bridge used by families living south of the bridge. AEA 3 Board members also visited the site of the Donovan residence and the road past the Donovan home.

Another request for transportation was considered by the Estherville Board at the same meeting at which the Donovan request was considered. The Thomas Merrill family had been receiving transportation when they lived in the south part of town across the bridge in the vicinity of the three families discussed above, but had recently moved a short distance north of the bridge. The Merrill request for continued transportation was denied because the children no longer were required to cross the bridge on the way to school.

The final result of the Estherville Board actions on October 31, 1975, regarding transportation was to eliminate discretionary bussing of students except for the children of the three families living south of the bridge on State Highway 4. In their opinion, that was the only situation deserving discretionary transportation. The AEA 3 Board of Directors, with the evidence before them, affirmed the decision of the Estherville Board.

II.
Conclusions of Law

The Appellant has contended that the denial of school bus transportation to his children by the Estherville Board of Directors, while children of other families also residing within the mandatory bus transportation limits received such transportation had no rational basis and is therefore an abuse of discretion by the School Board. This contention, while not expressly stated in the appeal affidavit, is implicit in his appeal from the decision of the AEA 3 Board of Directors affirming the Estherville Board. A review of the record leads us to an opposite conclusion. Section 285.1, subsection 1, The Code 1975, provides in part, for the discretionary bussing of pupils within the statutory limits for mandatory bussing:

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.]

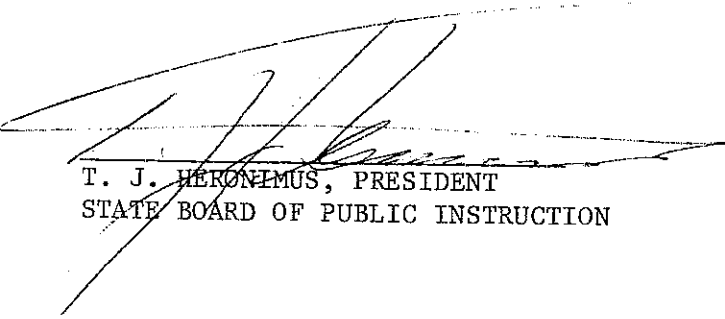
Upon review of the record it is evident that the Estherville Board did not abuse its discretion in denying bus transportation to Mr. Donovan's children. The Board, at the same meeting, also denied discretionary transportation or continued transportation to families living in other locations having varying degrees of safety problems. The Estherville Board obviously felt the safety problems posed by the highway bridge were much more significant than those safety problems posed for other school children whose parents requested discretionary transportation. All of these matters were brought before the AEA 3 Board. The Hearing Panel finds that the Board of Directors of the Area Education Agency 3 made its decision in this matter after due and sufficient consideration, and had sufficient basis in fact for its decision.

III.
Decision

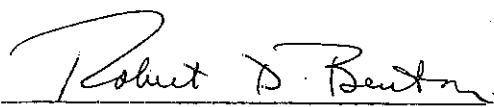
The decision of the Lakeland Area Education Agency 3 Board of Directors (AEA 3) rendered in this matter is hereby affirmed.

April 8, 1976
DATE

March 10, 1976
DATE



T. J. HERONIMUS, PRESIDENT
STATE BOARD OF PUBLIC INSTRUCTION



ROBERT D. BENTON, Ed.D.
STATE SUPERINTENDENT AND
PRESIDING OFFICER