

**IOWA STATE DEPARTMENT
OF EDUCATION
(Cite as 19 D.o.E. App. Dec. 246)**

<i>In re Transportation Route For</i>	:	
<i>Students in Regency Manor</i>	:	
<i>Mobile Home Park</i>	:	
Sioux City Community School	:	
District, Appellant,	:	
v.	:	RULING ON
	:	MOTION FOR STAY
	:	OF ORDER
Western Hills Area Education Agency,	:	
Appellee, and	:	
Raquel Ramirez, <i>et al.</i> , Intervenors.	:	[Adm. Doc. # 4343]

Appellant, through its attorney, filed an affidavit of appeal in the above-captioned matter with the Director of the Department of Education on March 22, 2001, requesting that Appellee's decision of March 19, 2001, be reversed. Appellant has now filed a Motion For Stay of Order.

Appellant included the following reasons for its Motion For Stay of Order:

Bus service has not been provided to these students since November 10 of 2000, and the District is not in a position to resume busing immediately.

The record reflects that during the time that the District was not providing bus service to these students, they were not walking to school, but were apparently making other arrangements.

The hearing before this Board, pursuant to statute, will occur in a fairly expeditious fashion.

Balancing the relative positions of the parties, providing the District with a stay of the effect of the WHAEA's Order at this time, would not require any change in behaviour [sic] on the part of the students. They and their families have been making arrangements for the students to get to school as required without bus transportation provided by the District. Indeed, to disturb the routine of the students at this time, when there is the possibility that bus service would then cease a few days to weeks after it is resumed, may be even more unsettling to these children.

The District, however, would be required to make adjustments in their budget, make arrangements for an appropriate vehicle, and arrange for a bus driver, possibly requiring the addition of another employee in accordance with various statutory and contractual obligations, all of which the District may not be in a position to accomplish more than four to five days prior to a hearing by this board.

Further, the District's position upon this appeal is that the Order of the WHAEA is a nullity and in excess of their statutory authority. It would be an injustice to require the District to comply with the order to begin busing immediately.

The language of Iowa Code section 285.12 regarding the effect of the order of the agency pending appeal to the Director is mandatory only on the part of the party appealing the order. The statute is silent as to the authority of the Director to grant a stay on the enforcement of this order.

...

(Appellant's Motion For Stay of Order, March 22, 2001.)

Intervenors' counsel filed a Resistance to Motion For Stay of Order on March 22, 2001, which stated, in pertinent part,

5. Iowa Code section 285.12 provides, "Pending final order made by the director, upon any appeal prosecuted to such director, the order of the agency board from which the appeal is taken shall be operative and in full force and effect."
6. There is no provision in the statute authorizing or allowing a stay of an agency board's decision. To the contrary, the statute mandates the order be operative and given full force and effect. Therefore, the Director of the Iowa Department of Education lacks the authority to stay an order of an agency board pending a final decision.

...

(Intervenors' Resistance to Motion For Stay of Order, March 22, 2001.)

The designated administrative law judge finds that the Legislature has clearly provided the answer to the issues raised in the Motion and Resistance. Iowa Code Chapter 285, entitled, "State Aid for Transportation," contains the following controlling language in section 285.12(2001):

Disputes – hearings and appeals.

... Pending final order made by the director, upon any appeal prosecuted to the director, the order of the agency board from which the appeal is taken shall be operative and be in full force and effect.

The above statute is dispositive of the issues raised in this Motion, pending a final order by the Director of the Department of Education after hearing the appeal.

3-28-2001

DATE

Susan E. Anderson

SUSAN E. ANDERSON, J.D.
ADMINISTRATIVE LAW JUDGE