IOWA STATE DEPARTMENT
OF PUBLIC INSTRUCTION

Re: Appeal of Cedar Rapids Community School District from Decision of Grant Wood Area Education Agency

Mrs. John Arbore & Mrs. David Draheim, for and on Behalf of the Patrons of Twin Pines North, Appellees

vs.

Cedar Rapids Community School District, in the County of Linn, State of Iowa, Appellant

DECISION

The above entitled matter came 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 August 19, 1975, in the State Board of Public Instruction Conference Room in Des Moines, Iowa. Mrs. John Arbore and Mrs. David Draheim appeared on their own behalf and on behalf of the patrons of Twin Pines North. The Cedar Rapids School District was represented by the Board Secretary, Otto F. Wiedersberg, and attorney Richard F. Nazette. The Grant Wood Area Education Agency (Area Education Agency 10, hereinafter A.E.A. 10) was not represented. The Hearing was held pursuant to Section 285.12, The Code 1975, and Departmental Rules, Chapter 670--51, on file with the Secretary of State.

The facts are not disputed. Section 285.1, subsection 1, The Code 1975, provides for mandatory bussing of elementary students residing more than two miles from the designated attendance center and discretionary bussing of elementary students residing less than two miles from the designated attendance center. Mrs. Arbore and other parents residing in an area of the Cedar Rapids School District, known as Twin Pines North, requested that the Cedar Rapids School District provide bus transportation for the elementary students living in the area and attending Hiawatha Elementary School, even though the distance was less than two miles from school. In a letter of June 9, 1975, John H. Cordes, director of Educational Services of the Joint County School System, on behalf of County Superintendent Dwight Bode, advised the Appellant School District that he had reviewed what appeared to be the only route for transporting students from Twin Pines North to the school, determined it to be the "safest and most passable route," and found the maximum distance to be within the two mile limitation. The Board of Directors of the Cedar Rapids School District denied the request of the parents of Twin Pines North to transport their children to school on June 23, 1975, based on the fact that the distance was less than the statutory two miles and that Dr. Cordes had designated it the "safest and most passable" route.

On July 1, 1975, the Appellees appealed the decision of the School District to A.E.A. 10 and requested that the Board of Directors determine that no safe walking route existed and that it direct the Appellant School District to provide transportation for the students. On July 21, 1975, the A.E.A. 10 Board heard the appeal on the parent's request and directed the Cedar Rapids Community School District to provide transportation from Twin Pines North to the Hiawatha Elementary School.

The Cedar Rapids Community School District made a timely appeal of the decision of the A.E.A. 10 Board to the State Superintendent of Public Instruction pursuant to Section 285.12, The Code 1975. The basis of the appeal was that the A.E.A. 10 Board of Directors, by directing the Appellant Board to provide transportation for the pupils of Twin Pines North, exceeded its statutory authority and imposed upon the discretionary authority granted to the Cedar Rapids Board of Directors.

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.

Of central concern in any walking route for students from Twin Pines North to the Hiawatha Elementary School is the speed limit and pattern of traffic on Blairs Ferry Road plus the fact that no sidewalk exists on either side of this highway. The particular stretch of this road of concern to this hearing is posted with forty-five (45) mile per hour speed limit signs. For a week, Mrs. Arbore counted the vehicular traffic on the road during the hour prior to school in the morning and the hour just after school dismissal in the afternoon. Counting only cars and trucks, the morning hour averaged 340 cars and 135 trucks for a total of 435 vehicles per hour. The total for the afternoon hour reached nearly 1100 vehicles per hour or about one vehicle every 3.3 seconds. The road shoulder upon which the children walk is from six to eight feet wide and during the winter months is often severely narrowed by snow and ice piled there by road maintenance crews. The route normally taken by the students from Twin Pines North when walking to school, and which was the only route considered by A.E.A. 10, begins on collector streets, then north on North Pine Drive to Blairs Ferry Road, then east to the school crossing signal at or near 13th Avenue and then north away from the hazardous conditions on Blairs Ferry Road. An alternate but longer walking route would be for the students upon approaching Blairs Ferry Road to turn left and proceed west to the next safe crossing point, which on the record appears to be at the intersection with Edgewood Road N.E. Presuming stop signs or signals to provide safe crossing for the students at this point, the route would continue down the north side of Blairs Ferry road with the students walking east facing traffic to the intersection of 13th Avenue and then on the regular route to school. The preference of this alternate route is that it is in confirmity with Section 321.326, The Code 1975, which requires pedestrians to walk on the left side at all times when walking on or along a highway. The advantage of the first or "normal walking route" for these children, even though not complying with statute, is that is exposes the student to the hazardous conditions found along Blairs Ferry Road for a much shorter distance. Regardless of which route is utilized, walking along either side of Blairs Ferry Road for any distance is dangerous for persons of any age but much more so for children of elementary school age.

II.
Conclusions of Law

The Appellant contends that the A.E.A. 10 Board's discretionary authority in an appeal under Section 285.12 is limited to determining the "safest and most passable route" as provided in Section 285.1, subsection 9, because that is the only specific statutory reference to the authority of an area education agencies in transportation matters other than the general duties assigned in Section 285.9. The Hearing Panel does not agree. The scope of discretion exercised under Section 285.12 by an area education

agency also governs the exercise of discretionary authority of the State Superintendent under that Section and subsequently that of the State Board of Public Instruction under Section 257.10, subsection 4. Under the Appellant's argument, the scope of review of an area education agency on appeal would be limited to those matters to which it already has statutory authority. To carry this argument further, if the Superintendent has discretion in appeals only in those matters which are specifically authorized to him, an appeal could never be made to him in those matters when the matter must first be appealed to an area education agency, which has no express authority to review such matters. How would the Superintendent be able to exercise his authority when an appeal could not be perfected through an area education agency? Similarly, under this argument, would the Superintendent have the authority to review a decision of an area education agency board relating to the "safest and most passable route" when the Superintendent is not expressly authorized to act in that particular matter? The theory that the scope of review be limited to only those matters specifically authorized by statute to an area education agency board or the State Superintendent would cause Section 285.12 to be a nullity.

There is sometimes cited as authority for the Appellant's argument the case of Howell School Board District v. Hubbartt, 246 Ia. 1265, 70 N.W.2d 531 (1955). That case involved decisions of a county board of education and the State Superintendent overturning a local district board determination that the elementary students of the district attend a particular attendance center and that the parents provide the transportation. The county board and State Superintendent ruled that the children of the appealing families be allowed to attend school in a neighboring school district. The issue before the court was whether the State Superintendent and the county board of education had the authority to overrule the local board in a matter discretionary to it and order the pupils residing more than two miles from school to be sent to another school outside the district while the elementary school in that district remained open. The court held that the determination of attendance centers was a discretionary determination of the local board and the State Superintendent and the county board of education were without authority in their decisions. The court said at page 536:

> Inasmuch as the school district by reason of the statute just quoted has: "* * * exclusive jurisdiction in all school matters over the territory therein contained", we hold the Howell school district has authority to determine where the elementary pupils within the district shall attend school. It is a discretionary matter for the determination of the board. The courts should not interfere with such matters. Kinzer v. Directors of Independent School District, 129 Iowa 441, 447, 105 N.W. 686, 3 L.R.A., N.S., 496. If the court cannot or should not interfere with matters which are discretionary with the school board it must naturally follow the state superintendent and the county board of education has no authority to determine matters within the exclusive jurisdiction of the local board. And this is particularly true when there is no statutory authority giving the state superintendent or county board of education the right to do so. (Emphasis ours)

At first glance, the result in Howell appears to be that county boards, the predecessors of the area education agency boards, and the State Superintendent had no authority in discretionary matters of local boards. This result was based on the case of Kinzer v. Directors, 129 Ia. 441, 105 N.W. 686 (1906). The Kinzer decision involved an appeal to the county superintendent and the State Board of Public Instruction under Code Sections which are now contained in Chapter 290, The Code 1975. The court in Kinzer discussed the scope of review in such appeals in at least two places. Compare the underlined portions of Kinzer to that above in Howell. The first appeared at page 443:

> It is also plain that plaintiff cannot maintain this action to question the proceedings of the defendants in a matter which is within their discretion. Code, Section 4341. The method provided for reviewing the proceedings of a school board, either as to law or fact, relating to a subject which is within their jurisdiction and as to which a discretion is vested in them, is by appeal to the county superintendent of schools. (Emphasis ours)

The second appeared at page 447:

> If the board has the power to make the rule in question, then the findings as to whether the rule had been violated by the plaintiff and whether the apology tendered by him was sufficient or not are not subject to review in this proceeding and can be tested only by appeal to the county superintendent. Plainly it is not intended that the courts shall interfere with the action of the school authorities in matters of discipline, as to which such authorities are vested with discretionary power. (Emphasis ours)

The second quote from Kinzer is from the same page cited by the court in Howell as authority for the proposition that matters of discretion could not be appealed to the county boards of education or the State Superintendent. What the Kinzer court clearly said that was not reflected in the Howell decision was that while matters of discretion may not be reviewed by the courts, they may be reviewed through administrative channels upon appeal pursuant to the proper statute. The quoted portion from the Howell decision, while appearing to have far-reaching effect must be held to the facts in that case, a situation in which the State Superintendent and County Board assigned elementary students to attendance centers in neighboring school districts while the local district continued to maintain an elementary attendance center. To do otherwise would render the Howell decision an anomaly.

A decision subsequent to Howell in Center Township School District v. Oakland Independent School District, 251, Ia. 1113, 104 N.W.2d 454 (1960), reviewed the scope of authority on an appeal under Section 285.12. That Section is similar to Section 285.12 except that it provides for appeals in the event of disagreement between a local school board and an area education agency board. The court in that decision reiterated the view in Kinzer. It said at page 456:

> The rule to be gathered from our pertinent precedents is that decisions of local boards involving the exercise of their discretion must be appealed to the county or state superintendent. However, where the board exceeds the powers conferred upon it, appeal to the school authorities is not required and resort may be had direct to the courts. Perkins v. Board of Directors, 56 Iowa 476, 478-479, 9 N.W. 356-357; Kinzer v. Directors of Independent School Dist., 129 Iowa 441, 443, 105 N.W. 686, 3 L.R.A.,N.S. 496; Templer v. School Tp., 160 Iowa 298, 401-402, 141 N.W. 1054; Knowlton v. Baumhover, 182 Iowa 691, 726, 166 N.W. 202, 5 A.L.R. 841; Security Nat. Bank of Mason City v. Bagley, 202 Iowa 701, 704-705, 210 N.W. 974, 49 Iowa 26, 30, 212 N.W. 368; Riecks v. Independent School Dist., 219 Iowa 101, 105, 257, N.W. 546; Altman v. Independent School Dist., 239 Iowa 635, 641, 32 N.W.2d 392, 395. (Emphasis ours)

This Hearing Panel believes that decisions prior and subsequent to the Howell decision, including the Kinzer decision which was the basis for the Howell decision, indicate clearly that discretionary decisions of local boards are appealable under respective statutes and that discretionary matters of transportation may be appealed under Section 285.12 to an area education agency board and subsequently to the State Superintendent. Any other finding would cause Section 285.12 to be devoid of meaning and place in the law.

III.
The Decision

The decision of the Grant Wood Area Education Agency (A.E.A. 10) Board of Directors rendered in this matter on June 21, 1975, is hereby affirmed.

Any previous decisions of the Superintendent of Public Instruction which may be used as precedent and which are contrary to matters contained in this decision regarding the scope of review of discretionary decisions of local boards of directors by the area education agency boards of directors under Section 285.12 are hereby overruled.

September 18, 1975
DATE

Robert D Benton

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