

BEFORE DENISE JUNEAU, STATE SUPERINTENDENT OF PUBLIC INSTRUCTION,
STATE OF MONTANA

KATHY KNOBLOCH,)	
)	
Appellant,)	OSPI 316-08
)	
vs.)	DECISION AND ORDER
)	
BIG HORN COUNTY TRANSPORTATION)	
COMMITTEE,)	
)	
Respondent.)	

Having reviewed the record and considered the parties' briefs, the Superintendent of Public Instruction issues the following decision and order:

PROCEDURAL HISTORY

On June 24, 2008, the Board of Trustees of District 17-H (Hardin District) held a regularly scheduled meeting. Kathy Knobloch presented a letter to the Board at that meeting requesting that the Hardin District allow Colstrip District to bus elementary students from the Northern Cheyenne Reservation portion of the Hardin District to school in Colstrip. No action was taken on this issue by the Hardin District.

From June 27, 2008 through approximately August 6, 2008 Appellant Knobloch and the Big Horn County Superintendent communicated by email, letter, and telephone calls regarding this transportation issue. Knobloch requested this issue be put on the agenda for the next meeting of the Big Horn County Transportation Committee ("Committee") which was scheduled for September 11, 2008.

At the Committee meeting held on September 11, 2008 Knobloch presented a petition

signed by parents residing in the Northern Cheyenne Reservation portion (Muddy Creek area) of the Hardin District requesting that the "committee make a determination for their children under MCA 20-5-321 and 20-10-121." A motion to table the petition and a motion to reject the petition were made but neither was seconded or acted on at the meeting.

On October 9, 2008, the Superintendent of Public Instruction ("State Superintendent") received Appellant Knobloch's letter of appeal from the decision of the Big Horn County Transportation Committee. The State Superintendent issued a Notice and Briefing Schedule, the parties submitted briefs, and this matter is now at issue.

ISSUES ON APPEAL

1. Does the Bighorn County Transportation Committee have the authority and responsibility to determine if it is impractical for Appellant Knobloch's children to attend school in the Hardin District?
2. Does the Bighorn County Transportation Committee have the authority to direct the Hardin District to furnish transportation for Appellant's children if the Committee determines it is impractical for the children to attend school in the Hardin District?

STATEMENT OF FACTS

1. Appellant Knobloch lives in the Muddy Creek area of the Hardin District. The area is located in the northeastern portion of the Hardin District between Busby and Lame Deer, Montana.
2. The Hardin District operates schools for grades Kindergarten through 12th (K-12) in the town of Hardin and a K-5 school at Crow Agency, Montana.
3. The Muddy Creek area is approximately 60 miles from Hardin and approximately 37 miles from Crow Agency. It is approximately five miles from Lame Deer, but is outside of the Lame Deer District which offers school for grades K-12.
4. Recognizing the transportation mileage issues for the Muddy Creek area students who

reside in the Hardin District, the Hardin and Lame Deer Districts have a reciprocal transportation agreement allowing the Lame Deer District to transport K-12 Hardin District students in the Muddy Creek area to the Lame Deer Schools. This agreement further provides that any agreement with any other school district to pick up, transfer, or allow any type of transportation arrangement of Hardin District students would violate and terminate the agreement.

5. On June 16, 2008 Knobloch sent a letter to the Hardin trustees requesting that the Hardin District allow Colstrip Public Schools to bus elementary students from the Northern Cheyenne portion of the Hardin District to Colstrip.

6. The Board met on June 24, 2008 at which time they allowed Knobloch to present her letter and transportation request. No action was taken on Knobloch's request by the Hardin trustees.

7. On June 27, 2008 Knobloch sent an email to the Big Horn County Superintendent summarizing the transportation issue and requesting the issue be added to the agenda of the next Bighorn County Transportation Committee meeting at which time she intended to present a petition signed by affected residents.

8. On July 8, 2008 Knobloch sent a letter to the Big Horn County Superintendent providing additional information regarding the transportation issue, again requesting the matter be put on the Committee agenda for the September 11, 2009 meeting and further requesting a meeting be held within a month so that the transportation issue could be addressed before the beginning of the up-coming school year.

9. On July 8, 2008 the Big Horn County Superintendent sent a letter to Knobloch advising that in addition to attending Hardin schools, her children could attend school at Crow Agency or in Lame Deer (under the transportation agreement between the Hardin and Lame Deer Districts).

10. On July 8, 2008 the Hardin Board of Trustees held a regular meeting at which they again heard from Knobloch requesting that the Hardin District allow the Colstrip District to bus students from the Northern Cheyenne portion of the Hardin District to Colstrip. No action was taken at that time, and the trustees recommended that the request be taken to the Bighorn County Transportation Committee.

11. On September 11, 2008 Knobloch presented the Bighorn County Transportation Committee with a petition from residents of the Northern Cheyenne Reservation portion (Muddy Creek area) of the Hardin District and requested the Committee "exercise their authority to determine that it is impractical for those elementary children to attend school in Hardin due to the fact that the length of time for each bus trip is in excess of the 1 hour limit authorized." Knobloch requested the Committee resolve the issue by allowing buses from both Lame Deer and Colstrip districts to travel to Busby to pick up and transport students to Colstrip, or in the alternative, to pay mileage to parents to transport students out of their district of residence.

12. The Committee discussed the petition, but a motion to table the petition for further research did not receive a second and died on the floor. A motion to reject the petition also did not receive a second and died on the floor.

13. On October 6, 2008, pursuant to §20-5-321(1), MCA, Knobloch appealed the Big Horn County Transportation Committee's decision to refuse to make a determination in this matter.

CONCLUSIONS OF LAW AND OPINION

Issue 1. Does the Bighorn County Transportation Committee have the authority and the responsibility to determine if it is impractical for Appellant Knobloch's children to attend school in the Hardin District?

Appellant Knobloch submitted a petition to the Bighorn County Transportation

Committee. The petition states:

We the undersigned residents of the Northern Cheyenne Reservation portion of School District 17-H [Hardin District] request that the Big Horn County Transportation Committee exercise their authority under MCA 20-5-321 to determine that it is impractical for our elementary children to attend school in Hardin due to the fact that the length of time for each bus trip is in excess of the 1-hour limit authorized under MCA 20-10-121. We also request that School District 17-H fulfill their obligations under the above cited sections of Montana law by approving out-of-district attendance agreements and cooperating with Colstrip Public Schools to provide transportation for our children.

Respondent, Bighorn County Transportation Committee, argues, *inter alia*, that because no out-of-district attendance agreement was presented to the district, the Committee did not have the authority to determine whether the geographic conditions make it impractical for these students to attend a school in their district of residence.

The request before the Committee, however, was clearly within their statutory authority. County Transportation Committees' duties are delineated in §20-10-132(1), MCA as follows:

- (a) establish the transportation service areas within the county, without regard to district boundary lines, for each district that operates a school bus transportation program;
- (b) except as provided in subsection (2), approve, disapprove, or adjust the school bus routes submitted by the trustees of each district in conformity with the transportation service areas established in subsection (1)(a);
- (c) approve, disapprove, or adjust applications, approved by the trustees, for increased reimbursements for individual transportation because of isolated conditions of the eligible transportee's residence;
- (d) conduct hearings to establish the facts of transportation controversies that have been appealed from the decision of the trustees and act on the appeals on the basis of the facts established at the hearing; and
- (e) determine if geographic conditions make it impractical for a child to attend school in the district of residence, in accordance with [20-5-321](#)(1)(b).

* * *

Section 20-5-321(1)(b), MCA, delineates the criteria for making a determination regarding impracticality of attendance in the child's district of residence, specifically:

- (A) the length of time that is in excess of the 1-hour limit for each bus trip for an elementary child as authorized under [20-10-121](#);
- (B) whether distance traveled is greater than 40 miles one way from the child's home to school on a dirt road or greater than a total of 60 miles one way from the child's

home to school in the district of residence over the shortest passable route; or (C) whether the condition of the road or existence of a geographic barrier, such as a river or mountain pass, causes a hazard that prohibits safe travel between the home and school.

Section 20-5-321, MCA, addresses out-of-district attendance agreements, but does not require an agreement as prerequisite to a county transportation committee determination under §20-10-132(1)(e), MCA. Rather, an out-of-district attendance agreement is mandatory if certain criteria are met, indicating a decision regarding transportation pursuant to the requirements of §20-5-321, MCA, would precede some out-of-district attendance agreements.

Appellant Knobloch alleges the Committee has the duty to make a determination regarding the impracticality of children represented on the petition to attend school in the Hardin district pursuant to §20-10-132(1)(e), MCA.

At the Committee's regularly scheduled meeting on September 11, 2008, Appellant Knobloch was allowed to present the petition, but the Committee members were advised by the County Superintendent that they could not make a decision about bus routes into another county. Although the petition was discussed at length at the meeting, no decision was made.

The petition before the Committee asked that the Committee exercise its statutory authority to determine the practicality for the Muddy Creek area children to attend school in Hardin due to the length of the commute. The law clearly states that the Committee has the authority to make a determination regarding the impracticality of a child attending school in the district, and the Committee should have made such a determination. Although §20-5-321(1)(b)(ii), MCA, states: "[t]he decision of the county transportation committee is subject to appeal to the superintendent of public instruction, . . ." and "[t]he superintendent of public instruction "may review and rule upon a decision of a county transportation committee without an appeal being filed" there must first be a decision from the county transportation committee for the superintendent of public instruction to review.

The State Superintendent remands this issue to the Big Horn County Transportation Committee for a decision on the impracticality of children represented on the petition to attend school in the Hardin District. The Committee is directed to consider this issue in accordance with the criteria established in §20-5-321(i)(b)(i)(A) - (C), MCA, and render a decision within 30 days of this decision.

Issue 2. Does the Bighorn County Transportation Committee have the authority to direct the Hardin District to furnish transportation for Appellant's children if the Committee determines it is impractical for the children to attend school in the Hardin District?

Section 20-10-121(1), MCA provides that:

The trustees of any district **may** furnish transportation to an eligible transportee who attends a school of the district or has been granted permission to attend a school outside of the district. Whenever the trustees of a district provide transportation for any eligible transportee, the trustees **must** provide all eligible transportees of the district with transportation. The trustees **shall** furnish transportation when directed to do so by the county transportation committee and such direction is upheld by the superintendent if public instruction. (Emphasis added.)

This statute gives a transportation committee the implicit authority to direct a district to provide transportation in some situations. A determination pursuant to §20-10-132(1)(e), MCA that it is "impractical for a child to attend school in the district of residence" requires mandatory approval of an out-of-district attendance agreement. Section 20-5-321(1)(b)(i), MCA. Consequently, a determination that it is impractical for children to attend school in their district-of-residence could trigger a directive to provide transportation to an out-of-district school. These are not the facts on appeal, however.

In this situation, the Bighorn County Transportation Committee failed to make any determination regarding the request in the petition presented. There are a series of contingencies which must be met to determine if a transportation committee appropriately directed a school board to furnish transportation. A decision on the matter would be fact

specific and should not be generalized.

The Montana Attorney General addressed a similar issue in an opinion letter to Ted Lympus at 42 A.G. 115 (10/14/88). The question presented was:

What is the obligation of a school district which does not provide bus transportation to pay transportation costs to parents who enroll their child without permission of the resident district's board of trustees in a district other than the district of residence?

In that case the Attorney General held:

[W]hen a pupil's district is providing transportation to any "eligible transportees," an "eligible transportee" is entitled to transportation to a school in his district; however, he must obtain his school board's permission to be provided transportation by his district to a non resident school.

In the current situation, the Hardin District has made transportation available to Appellant Knobloch's and petitioners' children to attend schools in their district of residence. The Hardin District has also made transportation available to the Lame Deer schools under an agreement between the two districts. Their agreement further provides "any student and/or parent wanting to attend any other school [other than Hardin or Lame Deer] should be responsible for providing their own transportation without assistance from the districts." Students in the Muddy Creek area of the Hardin District have the option to attend school at Hardin, Crow Agency, or Lame Deer with the school of choice providing transportation.

The resident district is required to pay transportation for a resident student attending school out-of-district only if an out-of district attendance agreement is determined to be mandatory or the district of residence approves a discretionary out-of-district attendance agreement and agrees to pay for transportation. If such an agreement does not exist between the district of residence and district of attendance, ARM 10.7.106(3) states "the parent or guardian shall provide transportation at his own expense."

Appellant argues that parents have the right to choose where their children attend school. Section 20-5-320, MCA supports this premise and provides in part:

(9)(a) A provision of this title may not be construed to deny a parent or guardian the

right to send a child, **at personal expense**, to any school of a district other than the resident district when the trustees of the district of choice have approved an out-of-district attendance agreement and the parent or guardian has agreed to pay the tuition as prescribed by 20-5-323. (Emphasis added)

Appellant Knobloch relies on *Carter County High School Dist. v. Walker*, OSPI 297-04 (2004) to support her argument that the Hardin District should be required to pay transportation to her district of choice. The issue in *Carter* pertains to a request for increased transportation payments due to isolation status and the point at which the mileage was calculated. In that case, the resident district had already approved the out-of-district attendance agreement for the student to attend one school and then calculated mileage from their home to a bus stop for a different school. This matter is distinguishable from the *Carter* decision in that the resident district has not approved an out-of-district attendance agreement for Knobloch's children. Further, as stated above, there is no determination regarding the transportation issue raised by Knobloch. As such, a decision by the superintendent of public instruction on this issue at this time would be both hypothetical and premature.

DECISION AND ORDER

The Bighorn County Transportation Committee is directed to determine if it is impractical for the Muddy Creek area children represented in the petition presented by Appellant Knobloch to attend school in the children's district of residence in accordance with the criteria in §20-5-321-(1)(b), MCA. The Committee is further directed to make the determination within 30 days of this decision.

DATED this 30th day of April, 2009.

/s/ Denise Juneau
Denise Juneau
Superintendent of Public Instruction

NOTICE:

You are entitled to judicial review of this Decision and Order in accordance with Mont. Code Ann. § 2-4-702 (2007). Judicial review may be obtained by filing a petition in district court within thirty days after the service of this Order.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of May, 2009 I caused a true and exact copy of the foregoing DECISION AND ORDER to be mailed, postage prepaid, to the following:

**Kathy Knobloch
P.O. Box 7
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/s/ Beverly J. Marlow
Beverly J. Marlow
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