

Iowa State Board of Education

Executive Summary

November 13, 2024



Agenda Item: Appeal Decision, # 5202 – Newton Community School District

State Board Priority: Goal 1: Promote safe, orderly, and welcoming learning environments

State Board Role/Authority: The State Board has the duty to decide this case under Iowa Code section 290.1.

Presenter(s): None – consent agenda

Attachment(s): Two

Recommendation: The Department recommends that the State Board adopt the proposed decision in this matter, which affirms the decision of the Newton Community School District.

Background: The administrative law judge issued a proposed decision on August 26, 2024, recommending that the decision to deny a late-filed open enrollment request be affirmed. No party appealed this proposed decision, which is to be affirmed by operation of law. Iowa Admin. Code r. 281—6.6(3).

IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
CENTRAL PANEL BUREAU

<i>In re Open Enrollment of K.S.</i>)	
)	
HEIDI SPEAR,)	DIA Docket No. 25DOE0002
)	DOE Admin. Doc. 5202
Appellant,)	
)	
v.)	
)	
NEWTON COMMUNITY)	
SCHOOL DISTRICT,)	
)	PROPOSED DECISION
Appellee.)	

Appellant Heidi Spear seeks reversal of a July 22, 2024 decision by the Newton Community School District (district) denying a late-filed open enrollment request on behalf of her minor child, K.S. The State Board of Education has jurisdiction over the parties and subject matter of the appeal, pursuant to Iowa Code sections 282.18(3B) and 290.1.

An in person hearing in this matter was held on August 19, 2024. Appellant Heidi Spear appeared and testified. Appellee Newton Community School District was represented by attorney Elizabeth Heffernan. Superintendent Tom Messinger testified for the district. The record includes the affidavit of appeal and supporting documents submitted by the Appellant, Exhibits 1 and 2 submitted by the district, and Exhibit A (consisting of 12 pages) submitted by the Appellant.

FINDINGS OF FACT

Appellant Heidi Spear resides within the boundaries of the Newton Community School District with her child, K.S. K.S. will be entering ninth grade during the 2024-25 school year.

K.S. attended Newton Christian School, a private school, from kindergarten through eighth grade. K.S.’s eighth grade class at Newton Christian School consisted of seven students. Newton Christian School does not offer ninth through twelfth grade education. K.S. did not receive special education services at Newton Christian School.

During the second semester of the 2023-24 school year, Spear and K.S. visited Lynnville-Sully high school in order to determine whether it might be a good fit for K.S. Spear noted that K.S. has exhibited symptoms of social anxiety, which she believes is best managed by keeping K.S. out of large group settings where she is required to interact with others. Spear and K.S. decided that a smaller school district like Lynnville-Sully would be a good fit for K.S.

Spear sent an e-mail to the principal of the Lynnville-Sully high school on February 9, 2024 stating that K.S. definitely wanted to attend Lynnville-Sully high school during the upcoming academic year. Spear also indicated to the principal that K.S. had been asked to play high school softball for Newton during the summer. Spear wrote:

Like I had mentioned, [K.S.] (mostly plays middle infield but is a great outfielder also) has already been asked to play high school ball for Newton this summer and their meeting is next Wednesday, the 14th, so we probably need to decide where she will play this summer fairly soon. She is open to playing for either school, but obviously would prefer to play up since she has already been asked to do so and has been attending open gyms with high schoolers this winter.

Spear wrote another e-mail to personnel at Lynnville-Sully high school on February 27, 2024. In that e-mail, Spear noted:

[K.S.] is playing softball for the high school team at Newton still this summer, so she cannot be officially enrolled at L-S until after the softball season is over, but she is fully committed to attending L-S next year, so hopefully you can “pencil her name” into the classes that she would like to take. I don’t know how it actually works to enroll her during the summer after softball season is over, so you will have to let me know what I need to do at that time.

Spear sent another e-mail to Lynnville-Sully personnel on May 2, 2024 asking, “Since [K.S.] can’t officially be enrolled until after softball ends, how does that work?” She also asked about K.S. attending volleyball open gyms during the summer before enrollment at Lynnville-Sully. The activities director at Lynnville-Sully responded that open gyms are for Lynnville-Sully students, therefore K.S. could participate once she had enrolled in school.

K.S. played high school softball for Newton during the summer of 2024. The team size, including varsity and junior varsity players, was approximately 30. K.S. participated in practices and games and traveled with the team to games. K.S. did not have any accommodations to participate in softball. Spear did not initiate any discussions with anyone at the Newton Community School District about K.S. open enrolling to Lynnville-Sully until after the softball season was over.

Around July 12, 2024, after the softball season ended, Spear reached out to Newton personnel to discuss open enrollment. After she brought in the open enrollment application, superintendent Tom Messinger spoke with Spear on the phone. Spear told Messinger that she had been advised by Lynnville-Sully to wait until after the softball season to submit the open enrollment application. Messinger explained that the deadline for open enrollment applications for the 2024-25 school year was June 30, 2024. He explained what might constitute good cause for a late application, including a serious health condition that the resident district cannot adequately address. Spear did not disclose at that time that K.S. had any health condition that was the basis for the

application. The open enrollment application likewise did not contain any information about a serious health condition on the part of K.S.

Spear obtained a letter from K.S.'s pediatrician, Dr. VandeZende at MercyOne Ankeny Pediatric Clinic dated July 22, 2024. The letter states that Dr. VandeZende recently met with K.S. to discuss her school situation for the fall. It further states that K.S. has dealt with anxiety but managed to flourish in a smaller school setting. Dr. VandeZende wrote, "It is my opinion that [K.S.] enrolling at Lynnville-Sully would be the best course of action for her mental health and general well-being."

Messinger spoke with Spear by phone again on July 22, 2024, the date of the school board meeting where K.S.'s open enrollment application was set to be discussed and acted upon. On that date, Spear disclosed to Messinger that K.S. had a diagnosis of anxiety and that this was the basis of the late open enrollment application. Spear provided the July 22 letter from Dr. VandeZende to Messinger at the July 22 school board meeting. Other than the letter, no other information, such as evaluation data, was provided by Spear regarding K.S.'s diagnosis.

The Newton Community School District provides special education services and accommodations to students with a variety of health conditions. The district has 504 teams and guidance counselors who work with students and families to identify and accommodate different areas of need. This includes students with anxiety, including social anxiety. The district, however, did not have the opportunity to discuss accommodations for K.S. during the time it was evaluating her open enrollment application as Spear only made the district aware of the anxiety diagnosis on July 22, the date of the school board meeting. Spear did not provide any information with the original open enrollment application regarding K.S.'s anxiety diagnosis; at that time, it does not appear that K.S. had received a diagnosis of anxiety.

CONCLUSIONS OF LAW

Iowa Code section 282.18 governs the open enrollment process. The standard filing deadline for an application to open enroll a student for the upcoming school year is March 1.¹ Since the legislation reinstating open enrollment deadlines for the 2024-25 school year did not become effective until July 1, 2024, the Iowa Department of Education determined that any application filed on or before June 30, 2024 would not require good cause for waiving the March 1 deadline.²

¹ Iowa Code § 282.18(2)(a). With Senate File 2435, the legislature reinstated the open enrollment deadline effective July 1, 2024.

² See Iowa Department of Education, Open Enrollment, *available at* <https://educate.iowa.gov/pk-12/educational-choice/open-enrollment#:~:text=Open%20Enrollment%20Deadlines,-Deadline&text=Any%20application%20filed%20on%20or,from%20the%20resident%20school%20district>. (last visited August 26, 2024). See also Iowa Open Enrollment Application Updated per Senate File 2435, Division VIII, School Year 2024-2025 & 2025-2026.

If a parent or guardian fails to file a notification of intention to open enroll by the applicable deadline, then the procedures of Iowa Code section 282.18(3A) apply.³ Subsection 3A provides:

3A. a. After March 1 of the preceding school year and until the date specified in section 257.6, subsection 1, the parent or guardian shall send notification to the district of residence and the receiving district, on forms prescribed by the department of education, that good cause exists for failure to meet the March 1 deadline. The board of directors of a receiving school district may adopt a policy granting the superintendent of the school district authority to approve open enrollment applications submitted after the March 1 deadline. The board of the receiving district shall take action to approve the request if good cause exists. If the request is granted, the board shall transmit a copy of the form to the parent or guardian and the school district of residence within five days after board action. A denial of a request by the board of a receiving district is not subject to appeal.

Good cause is not defined in subsection 3A, nor is it defined in the Department's open enrollment regulations. Good cause is defined in Iowa Code section 282.18(9)(a)(8), which relates to participation of open enrollment students in varsity interscholastic sports. That subsection provides a list of situations that provide "good cause" for open enrollment, including change in the child's residence due to a change in family residence, placement in foster care, participation in a foreign exchange program, and permanent closure of a nonpublic school. The Department's website information regarding open enrollment mirrors the list of circumstances described in subsection 282.18(9)(a)(8) and indicates that such circumstances are acceptable conditions for a timeline waiver if the change occurred or began after March 1.⁴

Iowa Code subsection 282.18(3B) governs open enrollment applications filed after March 1 that do not qualify for good cause as provided in subsection 3A. These applications are subject to the approval of the board of the resident district and the board of the receiving district. A decision of either board to deny an application filed under subsection 3B involving repeated acts of harassment of the student or a serious health condition of the student that the resident district cannot adequately address is subject to appeal under Iowa Code section 290.1. The subsection provides that the state board "shall exercise broad discretion to achieve just and equitable results that are in the best interest of the affected child or children."⁵

Neither the statute nor the Department's regulations define the term "serious health condition," nor do they provide any further guidance regarding how to assess whether

³ Iowa Code § 282.18(2)(a).

⁴ Iowa Department of Education, Open Enrollment, *available at* <https://educate.iowa.gov/pk-12/educational-choice/open-enrollment#:~:text=Open%20Enrollment%20Deadlines,-Deadline&text=Any%20application%20filed%20on%20or,from%20the%20resident%20school%20district>. (last visited August 26, 2024).

⁵ Iowa Code § 282.18(3B).

the resident district can adequately address the condition. The Department has published an Open Enrollment Handbook that provides information for parents and guardians as well as school districts. The Handbook provides that an applicant may qualify under the severe health need provision if all of the following are true:

- The serious health condition of the child is one that has been diagnosed by an appropriate healthcare provider, and the diagnosis has been provided to the district of residence.
- The serious health condition is neither short-term nor temporary.
- The district has been provided with the specifics of the child's health needs caused by the serious health condition and knows (or should know) what specific steps its staff must take to meet the child's needs.
- Upon notification of the serious health condition and the steps to be taken to meet the child's needs, school officials failed to implement such steps or its implementation of the steps was unsuccessful despite the district's efforts.
- A reasonable person could not have known before March 1 that the district could not (or would not) adequately address the child's health needs.
- It can be reasonably anticipated that a change in the child's school district will improve the situation.⁶

There is no dispute here that Spear did not file the open enrollment application for K.S. until after the June 30 deadline that applies for the 2024-25 school year. Likewise, Spear does not allege that K.S. meets the good cause exception under of the circumstances applicable to subsection 3A. The question, then, is whether K.S. has a serious health condition that the resident district cannot adequately address and whether that serious health condition justifies a late-filed application for open enrollment.

The director of the Department of Education is required under the open enrollment statute to recommend rules to the state board of education for the orderly implementation of section 282.18 and the state board is directed to adopt rules as needed for the implementation of section 282.18.⁷ Iowa Code chapter 17A sets out the requirements for agency rulemaking.⁸ Validly adopted rules have the force and effect of law.⁹ While the criteria referenced in the handbook are apparently being communicated to school districts and parents and guardians as an aid in evaluating good cause requests for a serious health condition, the state board of education cannot rely on the criteria as legal justification for such determinations. At best, the criteria are advisory, but not controlling.

⁶ Iowa Department of Education, Open Enrollment Handbook, pp. 20-21, *available at* <https://educate.iowa.gov/media/10193/download?inline> (last visited August 26, 2024). The handbook cites *In re Anna C.*, 24 D.o.E. App. Dec. 5, 8 (2006) for the factors that must be shown to establish a serious health need.

⁷ Iowa Code § 282.18(13).

⁸ See Iowa Code §§ 17A.3, 17A.4, 17A.5.

⁹ *Anderson v. Iowa Dept. of Human Services*, 368 N.W.2d 104, 108 (Iowa 1985).

In the absence of any other criteria, however, it makes sense to consider the handbook criteria to the extent that they are relevant to the situation and do not contradict the statute or existing rules. The criteria that are explicitly articulated in the statute are the deadline, the existence of a serious health condition, and the inability of the resident district to adequately address the condition.

K.S. has been diagnosed by a pediatrician with anxiety. The record does not contain any information regarding the basis for the diagnosis, such as chart notes or evaluation data. The sole piece of evidence in the record is a note written by the pediatrician on July 22, 2024 stating that K.S. “has dealt with anxiety.” Information about this diagnosis was provided to Newton and it is reasonable to assume that the diagnosis is not short-term or temporary.

With regard to the deadline, Spear had decided well before June 30 that she wished for K.S. to attend high school in the Lynnville-Sully school district for the 2024-25 school year. She had multiple communications with personnel from that district as early as February 2024 regarding this decision. She was clear in these communications that the reason she did not wish to file an application for open enrollment prior to the deadline was that she wished for K.S. to be able to “play up” with the Newton high school softball team during the 2024 school year and she was aware that K.S. could not do so if she filed an open enrollment application for Lynnville-Sully. Spear’s failure to meet the deadline was not related in any way to K.S.’s health condition.

Regarding the ability of the resident district to adequately address the condition, Spear had no communication with any personnel from the Newton district regarding K.S.’s diagnosis or how the district could accommodate K.S.’s anxiety prior to filing her open enrollment application in July. K.S. had never been enrolled in the Newton district, so the district had had no opportunity to evaluate K.S. for special education services or to obtain any information from K.S. or her family about what accommodations might be required to address her anxiety. K.S. participated as a member of the Newton high school softball team during the summer of 2024 without any accommodations and, according to information that Spear sent to the Lynnville-Sully district, had been participating in open gyms during the previous winter with the high school softball team. The district was not made aware of K.S.’s anxiety diagnosis at the time of the open enrollment application; it was not until the day of the school board meeting that Spear provided this information. The district superintendent provided credible testimony that the district provides accommodations and special education services to a variety of students with health conditions, including anxiety, and expressed a belief that the district could do so for K.S. as well.

While it is clear from the evidence in the record that Spear wishes for K.S. to attend the Lynnville-Sully school district, having missed the June 30 deadline she faces a higher burden of establishing that K.S. has a serious health condition that the Newton district cannot adequately address. Spear has not made this showing. Spear’s failure to provide any information to the Newton district prior to the day of the school board meeting regarding the application did not allow the district any opportunity to discuss with Spear how it could address K.S.’s anxiety. While Spear expressed the opinion at hearing that there is nothing that the district will be able to do based on its enrollment numbers,

this argument is unpersuasive. Messinger credibly testified that the district has resources in place to meet the needs of students with serious health conditions, including anxiety. Spear has not shown that the resident district cannot adequately address K.S.'s anxiety. This showing is required in order to allow a late-filed application for open enrollment based on a serious health condition.

ORDER

For the foregoing reasons, the decision of the Newton Community School District Board of Directors made on July 22, 2024 denying the open enrollment request filed by Spear on behalf of her minor child K.S. is affirmed.

cc: Heidi Spear, Appellant (AEDMS)
Elizabeth Heffernan, Attorney for Appellee (AEDMS)
Rebecca Griglione, DOE (AEDMS)

Appeal Rights

Any adversely affected party may appeal a proposed decision to the state board within 20 days after issuance of the proposed decision.¹⁰ An appeal of a proposed decision is initiated by filing a timely notice of appeal with the office of the director. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service.¹¹ The requirements for the notice are found at Iowa Admin. Code r. 281-6.6(4). Appeal procedures can be found at Iowa Admin. Code r. 281-6.6(5). The board may affirm, modify, or vacate the decision, or may direct a rehearing before the director or the director's designee.¹²

¹⁰ 281 Iowa Administrative Code (IAC) 6.6(4).

¹¹ *Id.*

¹² 281 IAC 6.6(6).

Case Title: IN RE: OPEN ENROLLMENT OF K.S., BY H.S., APPELLANT V.
NEWTON COMMUNITY SCHOOL DISTRICT
Case Number: 25DOE0002
Type: Proposed Decision

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Laura Lockard". The signature is written in a cursive, flowing style.

Laura Lockard, Administrative Law Judge

IOWA DEPARTMENT OF EDUCATION

CITE AS ___ D.o.E. App. Dec. ___

<i>In re Open Enrollment of</i>)	
<i>K.S., a child,</i>)	
)	
Heidi Spear,)	
)	
Appellant,)	Docket 5203
)	
vs.)	
)	
Newton Community)	FINAL AGENCY DECISION
School District,)	
)	
Appellee.)	

There being no appeal of the proposed decision dated August 26, 2024, the proposed decision in this matter is AFFIRMED by operation of law.

This is final agency action in a contested case proceeding.

Any party that disagrees with the Department's decision may file a petition for judicial review under section 17A.19 of the Iowa Administrative Procedure Act. That provision gives a party who is "aggrieved or adversely affected by agency action" the right to seek judicial review by filing a petition for judicial review in the Iowa District Court for Polk County (home of state government) or in the district court in which the party lives or has its primary office. Any petition for judicial review must be filed within thirty days of this action, or within thirty days of any petition for rehearing being denied or deemed denied.

Dated: November 13, 2024

Iowa State Board of Education, by:

John Robbins, President