

**IOWA STATE DEPARTMENT  
OF EDUCATION  
(Cite as 15 D.o.E. App. Dec. 55)**

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<b>In re Nicholas Olson</b>	:	
Randall & Marcia Olson, Appellants,	:	
v.	:	DECISION
MOC-Floyd Valley Community School District, Appellee.	:	
	:	[Admin. Doc. #3905]

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This case was heard telephonically on August 14, 1997, before a hearing panel comprising Mr. Lee Crawford, Bureau of Vocational & Technical Education; Ms. Christine Anders, Bureau of Food and Nutrition; and Amy Christensen, J.D., designated administrative law judge, presiding. The Appellants, Mr. Randall and Mrs. Marcia Olson, were present telephonically and were unrepresented by counsel. The Appellee, MOC-Floyd Valley Community School District [hereinafter, "the District"], was present telephonically in the person of Mr. Les Douma, Superintendent, and Mr. Paul Aykens, high school principal. The District was also unrepresented by counsel.

An evidentiary hearing was held pursuant to departmental rules found at 281 Iowa Administrative Code Ch. 6. Authority and jurisdiction for this appeal are found at Iowa Code sections 282.18 and 290.1(1997). The administrative law judge finds that she and the Director of the Department of Education have jurisdiction over the parties and subject matter of the appeal before them.

The Appellants seek reversal of a decision of the Board of Directors [hereinafter, "the Board"] of the District made on July 21, 1997, which denied their request for open enrollment for their son, Nicholas.

**I.  
FINDINGS OF FACT**

The Olsons are residents of the MOC-Floyd Valley District. Nicholas is the youngest of four children. The three older children and Nicholas have always attended school in the District, and the three older children had good experiences there. Nicholas is a technically a junior during the 1997-98 school year, although he did not pass a number of his sophomore courses, and will have to repeat them.

The Olsons filed their request for Nicholas to open enroll out of the District on July 21, 1997. The Board denied the application on July 21, 1997, because it had been filed after the January 1<sup>st</sup> deadline.

During his sophomore year, Nicholas received counseling, and suffered from depression. He was diagnosed as ADD. He was on antidepressant medication most of the year, which helped off and on. Mr. Olson testified Nicholas felt he had big shoes to fill, because his older siblings were very successful in academics, athletics, drama, and other activities. Rather than choosing to try, Mr. Olson testified Nicholas didn't try to achieve success. He failed a couple of courses, which meant he couldn't go out for football. Mr. Olson testified this started a depression, and Nicholas gave up on everything.

In addition, Mr. and Mrs. Olson testified, Nicholas had a relationship with a girl in high school that did not go well. The girl told her parents Nicholas had hit her, which was not the truth. Nicholas lived with this lie for several months. Eventually, the girl admitted that Nicholas had not hit her. However, being in the same area as this girl continues to be a problem. Mr. and Mrs. Olson feel he could get a much stronger start in a new high school where he could get his life together. Mr. Olson testified the girl came up to Nicholas and hit him at school a few times, and other students pushed him into lockers and harassed him repeatedly. Nicholas's grades went down, and he didn't try to get them up. Mr. Olson testified Nicholas was too concerned about things that were going on at school and after school to work on his grades. He testified that Nicholas' reputation at MOC-Floyd Valley is not good with students, teachers, and coaches.

In April and May, Nicholas spent about a month in Oak Harbor, Washington to get away from the girlfriend and other things which were going on at school.

The Olsons have talked with the guidance counselor, the principal, Mr. Aykens, and Mr. Gunderson, the assistant principal, about Nicholas' problems. In November or December, Mr. Aykens got Nicholas' teachers together, and the Olsons spoke with each of Nicholas' teachers. Mr. Olson testified one or two of the teachers were very helpful to Nicholas, although not all have been. Mr. Olson testified Mr. Aykens and a couple of the teachers are aware of all of Nicholas' problems.

Mrs. Olson testified about incidents that occurred this summer when several students were caught drinking. Nicholas was not among them. However, some of the students thought Nicholas had turned them into the police, and they were very angry with him. He did not turn them in, but the rumor went out that he had, so there are a number of senior students who are angry with him. One student threatened his life. He has to be very careful. He cannot go uptown, because if he does, other kids harass him. One time, a number of students surrounded his car yelling at him, and one was pounding on his car. Nicholas backed into another car trying to get away from the students in the parking lot.

Mrs. Olson testified Nicholas spent most of a month this summer going out of town to be with a friend. This was because he cannot be in their town without other kids yelling obscenities at him and at the Olson house, because they thought he had turned them in to the police. Most kids now know that Nicholas did not turn them in, but there are still some kids who believe he did. Mrs. Olson believes it will be extremely difficult for Nicholas to go back to school and have to be with these students. She testified this is too big a battle for Nicholas to fight at MOC-Floyd Valley. She testified these incidents this summer were the last straw in what had already been a very difficult year for Nicholas.

This summer, Mrs. Olson testified Nicholas has begun to show some motivation, and began taking a class at Sheldon. She testified he should finish the class before the beginning of the 1997-98 school year. He plans to take one class at a time to make up the classes that he failed. He would rather be a part of a regular high school community, rather than just getting his GED through the community college in Sheldon. This is why the Olsons are seeking open enrollment.

Currently, Mrs. Olson testified Nicholas is not using alcohol or drugs, and she wants it to stay that way. The Olsons have concerns about Nicholas' friends and his lifestyle.

The Olsons realize a transfer may not help Nicholas, but they believe it will, and most important to them, Nicholas is willing to try it. Nicholas told his parents he wants to transfer so he can concentrate on getting his grades up so he can go to college, and not get so involved with friends. Nicholas has told his parents he would not under any circumstances return to MOC-Floyd Valley.

The Olsons did not file for open enrollment by the January 1<sup>st</sup> deadline because they did not know the problems would get to be so big. Before the deadline, Nicholas' grades were bad, but they thought things would get better. Instead, Mrs. Olson testified, everything has spiraled downward. Mrs. Olson testified many of the problems snowballed after the January 1<sup>st</sup> deadline.

Superintendent Les Douma testified the Olsons were in to see him this summer regarding open enrollment for Nicholas, and told him everything they testified to at the hearing. He agrees they are very accurate in their reporting. Superintendent Douma is new to the District, so he spoke with Principal Aykens to get up to date. Mr. Aykens told him about some of the facts just as the Olsons testified. Superintendent Douma testified the Board went into closed session to discuss the case at length. Their position is they would like to continue to work with Nicholas, though he does not want to return. Mr. Douma testified he believes the District has the staff to work with Nicholas. As a result,

the Board felt it had to deny the request because it was filed late. The Board had denied a late-filed open enrollment request the year before, and they felt they had to be consistent.<sup>1</sup> In addition, they believe their District can handle Nicholas and his problems. Therefore, the Board denied the open enrollment request.

Principal Aykens testified he has been the principal at MOC-Floyd Valley for 22 years, and is familiar with the Olson family and the successes of the older children. He testified he feels for the family and their difficulties with Nicholas. He testified Nicholas is obviously not as motivated as his older siblings, and he doesn't know what the answer to that is. He testified that as a ninth-grader, Nicholas received the major number of credits that most students get, but during Nicholas' first semester of his sophomore year, he failed all but one class. He testified this was the start of a downward trend. Mr. Aykens testified that when Nicholas went to Washington in April, the school continued to send him his assignments, but Nicholas did not turn them in. When he returned from Washington, Mr. Aykens sent Nicholas a letter saying he could take the final exams, but would not be allowed any extended time. Nicholas chose not to take most finals, and as a result, only received one credit for the semester. Therefore, technically Nicholas is still a sophomore, although the District scheduled him for both sophomore and junior classes. Mr. Aykens testified they would like to work with Nicholas; they realize he's going to need a lot of extra help; but he doesn't feel it's insurmountable.

Mr. and Mrs. Olson tried to work with the administration, guidance counselor, and teachers to turn things around for Nicholas. They testified this was unsuccessful. The Olsons do not see that there is any change in staff, or any specifics in place that would be different this year than last year. Therefore, they do not believe Nicholas will be helped any differently than he was last year. They also do not believe it can be resolved at MOC-Floyd Valley, because Nicholas has been adamant that he will not return to the high school. Mr. Douma testified one counselor has been added to the high school staff, and a vice-principal. He testified he believes this will allow the high school staff to better meet the needs of students like Nicholas. Mr. Aykens testified he was not aware of the harassment of Nicholas by other students last year. Mrs. Olson testified two teachers knew of the harassment, and made efforts to separate Nicholas from the students who were harassing him. Mr. and Mrs. Olson testified they believe Nicholas needs the chance for a fresh start in a new school so he can complete high school. They recognize that Nicholas created some of his own problems, but that many of his problems were caused by other students.

The District published notice of the open enrollment deadlines in the school newsletter and in the newspaper before September 30, 1997. The District has a policy

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<sup>1</sup> If a District follows a policy of denial of late-filed open enrollments, but has an unusual case which it believes should be granted because of the specific circumstances of the case, the Board may grant the request, and if it states in the minutes of the Board meeting specifically why it is granting the request, it will only be obligated to approve future late-filed applications of the same factual nature. *In re Melissa J. Van Bommel*, 14 DoE App. Dec. 281, 284(1997).

which states it will adhere to the open enrollment deadlines, although it will evaluate each case individually. To date, the Board has not granted any late-filed open enrollments.

At the conclusion of the hearing, the panel issued an oral decision reversing the District's denial of open enrollment. The District later requested a written decision, and this decision is being issued pursuant to this request.

## **II. CONCLUSIONS OF LAW**

Parents must file open enrollment requests by a deadline of January 1<sup>st</sup>. Iowa Code section 282.18(2)(1997). However, the legislature recognized that certain events would prevent a parent from meeting the January 1<sup>st</sup> deadline. Therefore, there is an exception in the statute for two groups of late filers: the parents or guardians of children who will enroll in kindergarten the next year, and parents or guardians of children who have "good cause" for missing the January 1<sup>st</sup> filing deadline. Iowa Code sections 282.18(2) and (16)(1997).

The legislature has defined the term good cause rather than leaving it up to parents or school boards to determine. The statutory definition of good cause addresses two types of situations that must occur after the January 1<sup>st</sup> deadline. That provision states that good cause means:

a change in a child's residence due to a change in family residence, a change in the state in which the family residence is located, a change in a child's parents' marital status, a guardianship proceeding, placement in foster care, adoption, participation in a foreign exchange program, or participation in a substance abuse or mental health treatment program, or a similar set of circumstances consistent with the definition of good cause; a change in the status of a child's resident district, such as removal of accreditation by the state board, surrender of accreditation, or permanent closure of a nonpublic school, the failure of negotiations for a whole-grade sharing, reorganization, dissolution agreement, or the rejection of a current whole-grade sharing agreement, or reorganization plan, or a similar set of circumstances consistent with the definition of good cause. If the good cause relates to a change in status of a child's school district of residence, however, action by a parent or guardian must be taken to file the notification within forty-five days of the last board action or within thirty days of the

certification of the election, whichever is applicable to the circumstances.

Iowa Code §282.18(16)(1997).

Although the State Board of Education has rulemaking authority under the open enrollment law, the rules do not expand the types of events that constitute good cause. 281 IAC 17.4. The State Board has chosen to review potentially "similar sets of circumstances" on a case-by-case basis through the contested case appeal process. In re Ellen and Megan Van de Mark, 8 D.o.E. App. Dec. 405, 408.

The good cause exception relates to two types of situations: those involving a change in the student's residence, and those involving a change in the student's school district. Iowa Code sec. 282.18(16)(1997); 281 IAC 17.4. The pattern of harassment and threats experienced by Nicholas, his depression and resulting lack of effort, and the inability of the parents and the District to solve the problem, are not good cause for a late-filed open enrollment application as defined by the legislature and the department rules.

However, the legislature has granted important authority to the State Board of Education to deal with extraordinary situations such as this one. Iowa Code section 282.18(18)(1997) provides as follows: "Notwithstanding the general limitations contained in this section, in appeals to the state board from decisions of school boards relating to student transfers under open enrollment, the state board shall exercise broad discretion to achieve just and equitable results which are in the best interest of the affected child or children."

The combination of Nicholas' longstanding depression with resulting failure at school, and the harassment by other students, makes this case one which "cries out for extraordinary exercise of power bestowed upon the State Board", and makes this "a case of such unique proportions that justice and fairness require the State Board to overlook the regular statutory procedures". In re Katie Webbeking, 10 D.o.E. App. Dec. 268(1993). It is in Nicholas's best interest that he be allowed to open enroll to another school district.

Nicholas has been depressed for quite a long time, and there were serious consequences which resulted. Nicholas failed most of his sophomore courses. He went away to Washington State. This showed the panel that his situation was extremely serious to the Olsons. This depression was coupled with harassment of Nicholas by other students.

Students will not necessarily be allowed to open enroll after filing late applications just because they are harassed by other students. In re Chrysta Fournier, 13 D.o.E. App. Dec. 106 (1996). However, in certain cases involving harassment, the State

Board will use its subsection (18) authority to allow a late-filed application to be granted. In re Melissa J. Van Bommel, 14 D.o.E. App. Dec. 281 (1997). In Van Bommel, the State Board provided guidance to districts regarding when it would follow Iowa Code section 282.18(18)(1997) in open enrollment cases involving harassment. The following principles are to be considered in these kinds of cases. It should be noted that these are not absolutes, but factors to be considered when deciding harassment cases.

The harassment must have happened after January 1<sup>st</sup>, or the extent of the problem must not have been known until after January 1<sup>st</sup>, so the parents could not have filed their applications in a timely manner.

The evidence must show that the harassment is likely to continue.

The harassment must be widespread in terms of numbers of students and the length of time harassment has occurred. The harassment must be relatively severe with serious consequences, such as necessary counseling, for the student who has been subject to the harassment. Evidence that the harassment has been physically or emotionally harmful is important. Although we do not condone any harassment of students, in order to use section 282.18(18) authority, the harassment must be beyond typical adolescent cruelty.

The parents must have tried to work with school officials to solve the problem without success.

The evidence of harassment must be specific.

Finally, there must be reason to think that changing the student's school district will alleviate the situation.

The evidence in this case shows that the harassment of Nicholas fits within the Van Bommel guidelines. The harassment of Nicholas during the last school year included harassment by the girlfriend and other students at school, such as pushing Nicholas into lockers, and the girlfriend's false accusation that Nicholas had hit her. Even more serious was the harassment by the students who had been drinking and thought Nicholas had turned them into the police. While we realize some of the students now know he did not do this, some students still believe he did. At least one time the harassment involved beating on Nicholas' car, and he had to hit another car to escape that situation. The harassment included a death threat. Now Nicholas does not feel he can go uptown because there are too many students there who are harassing him.

An important factor is that most of the harassment, and all of the severe harassment by the drinking students happened after January 1<sup>st</sup>, so the parents could not have filed by the deadline.

While it is not known for sure, the evidence shows the harassment by the students who still think Nicholas turned them into the police is likely to continue. The harassment has been going on for a long time. Nicholas required counseling, and medication was required. The harassment has been emotionally harmful, and there have been physical threats.

The parents and the school have tried to work together to solve Nicholas' problems. Among other things, the school sent work to Nicholas when he was in Washington State. At least two teachers helped Nicholas. However, the problems have not been solved. In addition, the situation has gotten much worse this summer. We do not see significant change in the District from last year to this year. The students will be essentially the same. The staff will be essentially the same, although a vice-principal and counselor have been added.

While we do not know for certain whether a change in schools will solve the problems, it appears that it could. It will alleviate the harassment problem. It is particularly important that Nicholas thinks it will help. Although we do not think the fact that he says he will not go to school at MOC-Floyd Valley is something we need give very much weight, it is one factor to be considered in combination with all of the others. We also note that Nicholas took a class this summer to make up a class he failed, and he plans to take others. It appears that the change of scenery (sending him to Washington State) did help him to some degree.

For all of these reasons, this case is one that is appropriate for the use of subsection (18) authority. It is in Nicholas' best interest that he be allowed to exit the District. Iowa Code section 282.18(18)(1997).

All motions or objections not previously ruled upon are hereby denied and overruled.

### **III. DECISION**

For the foregoing reasons, the decision of the Board of Directors of the MOC-Floyd Valley Community School District made on July 21, 1997, which denied the Olson's late-filed request for open enrollment for Nicholas for the 1997-98 school year, is hereby reversed. There are no costs of this appeal to be assigned.



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DATE

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AMY CHRISTENSEN, J.D.  
ADMINISTRATIVE LAW JUDGE

It is so ordered.

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DATE

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TED STILWILL, DIRECTOR  
IOWA DEPARTMENT OF EDUCATION