

**IOWA DEPARTMENT OF EDUCATION**  
 (Cite as \_\_\_ D.o.E. App. Dec. \_\_\_)

<i>In re Open Enrollment T.J.U., T.R.U.,</i>	)	
<i>T.A.M.U., T.J.U., T.L.U., and T.R.U.,</i>	)	
	)	
T.U. and T.U.,	)	
	)	DECISION
Appellants,	)	
	)	
v.	)	
	)	
WACO Community School District,	)	Admin. Doc. No. 5065
	)	
Appellee.	)	

**STATEMENT OF THE CASE**

The Appellants seek reversal of a May 15, 2017, decision by WACO Community School District (“WACO”) Board (“Board”) denying a late filed open enrollment request on behalf of their minor children. The affidavit of appeal filed by June 6, 2017, and the District’s supporting documents are included in the record. Authority and jurisdiction for the appeal are found in Iowa Code sections 282.18(5) and 290.1. The administrative law judge finds that she and the State Board of Education (“State Board”) have jurisdiction over the parties and subject matter of the appeal before them.

An in-person evidentiary hearing was held in this matter on September 21, 2017, before designated administrative law judge, Nicole M. Proesch, J.D., pursuant to agency rules found at 281 Iowa Administrative Code chapter 6. T.U., who is the mother of the children, was present and represented by attorney Jim Sheets. Superintendent Jeff Dicks (“Superintendent Dicks”) appeared on behalf of the District and was represented by attorney Brett Nitzscke. Also present for the District was Carrie Coble, Business Manager and Board Secretary (“Ms. Coble”).

T.U. testified in support of the appeal. Appellants’ exhibit A was admitted and exhibits B-J were objected to and not admitted into evidence because they were not presented to the local board. Superintendent Dicks and Ms. Coble testified for the District and the school district’s exhibits 1-5 were withdrawn and exhibits 6-13 were admitted into evidence without objection.

## FINDINGS OF FACT

The Appellants reside in the WACO Community School District ("WACO") with their six children who range between ages six to eleven. Both T.U. and her husband graduated from the District. T.U. is now a teacher in the Winfield-Mt. Union School District ("Winfield"). This appeal was filed on behalf of their four oldest children. The Appellants filed a similar appeal on the two youngest children which was denied by the local board and the denial was affirmed by State Board. *See In re; Open Enrollment of T.L.U. and T.R.U.*, 28 D.o.E. App. 077 (2017).

T.U. testified that she was aware of the March 1 deadline. In her affidavit of appeal she admits "yes, it was late but I attempted to turn it in on March 2, 2017." T.U. now argues that she did in fact turn her applications in for all of her all of her children to Winfield by the March 1 deadline. T.U. testified that on Wednesday, March 1, she put the applications for open enrollment in the Mail Box in the teachers' lounge for Winfield at around 8:00 p.m. T.U. testified at the time she did not sign them. The following morning she checked with Barb Brown, who works in the main office at Winfield, to see if she received the applications and she advised T.U. that they were received but would be dated March 2, 2017. Ms. Brown told her to be aware that they could be denied because they were stamped on March 2, 2017. T.U. then took the paperwork back from her and later that day contacted WACO. T.U. testified that the person she spoke with told her to bring them in and there would be no problem. T.U. could not provide a name of the individual she spoke with.

T.U. testified that she later signed and dated them on March 2, 2017. T.U. kept the applications and did not turn them into WACO. T.U. testified that she tried to reach Superintendent Dicks several times between March 2, 2017 and March 8, 2017. On March 7 and 8, 2017, T.U. attempted to called Superintendent Dicks several times regarding her open enrollment applications. Superintendent Dicks told her he would not approve a late filed open enrollment application without good cause. T.U. testified that she mailed the applications for the two youngest children to the District on March 10, 2017, which were later denied. At the time she only sent in the applications for the two youngest because she was hoping that they would at least agree to the late open enrollment for the two youngest children. T.U. then submitted the open enrollment applications for the four oldest children by email to Carrie Cobble on April 20, 2017. The back page and signature page was missing. Ms. Cobble received the back page on May 1, 2017. They were signed and dated March 2, 2017.

T.U. offered testimony that her four oldest children have health concerns that she does not believe the District is addressing. Their 7<sup>th</sup> grader has food allergies that limit his ability to participate in pizza parties if T.U. is not notified ahead of time. T.U. is not always given prior notification. Their 6<sup>th</sup> grader has mild autism that makes it difficult to communicate with adults or peers. Her teacher excluded her from recess when her

work was not completed and T.U. disagreed with this and met with her I.E.P. team to discuss this. Their 3<sup>rd</sup> grader is a social butterfly with no issues. T.U. testified she has an amazing teacher. Their 2<sup>nd</sup> grader has attachment disorder which causes her to detach easily and forget things. T.U. testified that office staff have been rude to her and have shared their opinions with her about the size of her family, her children's medical needs, and their privacy and she does not want to share this information with staff. T.U. offered no other details about how her children's medical needs were not being met. She offered no other testimony about incidents of bullying.

T.U.'s open enrollment requests for the four older children were placed on the Board's agenda for May 15, 2017. T.U. participated in the meeting by phone and was given an opportunity to speak. T.U. presented a letter of her concerns to the Board. No motion was made regarding the applications thus, the Superintendent's denial of the applications was affirmed. The Appellants filed a timely motion to appeal.

### CONCLUSIONS OF LAW

The statutory filing deadline for an application for open enrollment for the upcoming school year is March 1. Iowa Code § 282.18. The law requires that "[b]y March 1 of the preceding school year . . . the parent or guardian shall send notification to [both] the district of residence and the receiving district" by March 1. Iowa Code § 282.18(2)(a). After the March 1 deadline, a parent or guardian shall send notification to the resident district that good cause exists for the failure to meet the deadline. *Id.* The law provides that an open enrollment application filed after the statutory deadline, which is not based on statutorily defined "good cause," must be approved by the boards of directors of both the resident district and the receiving district. *Id.* § 282.18(5).

A decision by the board, denying a late-filed open enrollment application that is based on "repeated acts of harassment or a serious medical condition that the resident district could not adequately address," is subject to appeal to the State Board under Code section 290.1. *Id.* § 282.18(5).

In this case, the Superintendent denied the late filed open enrollment applications on the basis that they were received after the open enrollment deadline and did not meet good cause. The overwhelming evidence presented supports the conclusion that the applications were, in fact, submitted late. Even if we assumed that T.U. submitted a timely application to Winfield by the March 1 deadline, the statute requires that both school districts receive the applications for open enrollment by the March 1 deadline. T.U. admits that WACO did not get the applications until March 10 for the two youngest children and April 20, 2017 for the four oldest children, which are the subject of this appeal.

T.U. now points to other reasons as good cause for missing the deadline, however the objective evidence shows that there was not good cause to miss the deadline. No evidence was presented with regard to the four older children that they were victims of harassment or had serious medical conditions that the District was not able to address. The real issue for the Appellants is that moving the kids to Winfield, to be at the same school with T.U., would be entirely more convenient for the family. We don't doubt that it would be convenient but that is not good cause to miss the deadline.

Open enrollment appeals of this type are not about a family's right to transfer their children to other school districts. A transfer may be made even though open enrollment is denied. The approval, or denial, of open enrollment does affect payment for the student's education. When a student transfers to a nonresident school district under open enrollment, the district of residence must pay for the student to attend the receiving district. When a student transfers to a nonresident school district outside of the open enrollment process, the nonresident district must charge the student tuition.

Parents are free to make the decisions they deem to be best for their children. We do not fault the Appellants for their decision to enroll their children in Winfield and the outcome of this appeal does not limit their ability to attend school in Winfield.

Our review focus is not upon the family's decision, but on the local school board decision. The issue for review here, as in all other appeals brought to us under Iowa Code section 282.18, is limited to whether the local school board made error of law in denying the late-filed open enrollment request. We have concluded that the Board correctly applied Iowa Code section 282.18 when it denied the late open enrollment applications. Therefore, we must uphold the local board decision.

### DECISION

For the foregoing reasons, the decision of the Board made on May 15, 2017, denying the open enrollment application of the Appellants on behalf of their children is hereby AFFIRMED. There are no costs of this appeal to be assigned.

11/15/17  
Date

11/15/17  
Date

Nicole M. Proesch  
Nicole M. Proesch, J.D.  
Administrative Law Judge

Charles C. Edwards Jr.  
Charles C. Edwards Jr., Board President  
State Board of Education