IOWA STATE BOARD
OF EDUCATION
(Cite as 20 D.o.E. App. Dec. 109)

In re Daniel Rief

Connie Rief, Appellant,	:	
v.	:	DECISION
Lewis Central Community School District,	:	
Appellee.	:	
		[Admin. Doc. #4410]

The above-captioned matter was heard telephonically on October 11, 2001, before Susan E. Anderson, J.D., designated administrative law judge. Appellant, Connie Rief, was present and was unrepresented by counsel. Appellee, Lewis Central Community School District [hereinafter, "the District"], was present in the person of Charles Scott, superintendent. The District was also unrepresented by counsel.

An evidentiary hearing was held pursuant to departmental rules found at 281 Iowa Administrative Code 6. Authority and jurisdiction for this appeal are found at Iowa Code sections 282.18 and 290.1(2001). The administrative law judge finds that she and the State Board of Education have jurisdiction over the parties and subject matter of the appeal before them.

Appellant seeks reversal of a decision of the Board of Directors [hereinafter, "the Board"] of the District made on October 1, 2001, that denied her late-filed open enrollment application for Daniel Rief.

I.
FINDINGS OF FACT

Appellant, Connie Rief, resides in the District with her family, including Daniel Rief ["Daniel"]. Daniel had attended school in the District since at least 1994. Daniel would be a fifth-year senior in the 2001-2002 school year, but he has dropped out of Lewis Central High School. On September 20, 2001, Mrs. Rief filed an open enrollment application for Daniel to attend school this year at Kanesville Alternative High School in the Council Bluffs District.

At the appeal hearing, Mrs. Rief submitted a letter dated September 27, 2001, from Daniel's psychiatrist, who, with his colleagues, has been treating Daniel for some seven years. This letter states, in pertinent part:

> Daniel Rief has been a patient of Alegent Psychiatric Associates. As you are aware, Daniel has continuing difficulties with symptoms of panic disorder and moderate depression. At this point, I feel Daniel would best be suited to attempt to continue his schooling through the individual learning center at Kanesville High School here in Council Bluffs. If it were possible for Daniel to obtain open enrollment to that program, I believe this would most facilitate his continued education.

(Dr. Seamands letter, 9/27/01.)

Mrs. Rief testified about the history of Daniel's medical problems in relationship to his education as follows. Daniel was first diagnosed with panic disorder and social phobia when he was a sixth-grader at Lewis Central Middle School. The Middle School serves about 650 students in grades six through eight. The diagnoses were reached after Daniel had run away from school, triggering an extensive psychiatric evaluation. Daniel was in the hospital for ten days. His doctors prescribed medication and counseling for the panic disorder.

Daniel returned to finish sixth grade at the Middle School, where he was placed in the Oasis Room for one period a day. In the Oasis Room, Daniel received individualized help with his studies, along with one or two other students. This arrangement, along with the medication and counseling, worked well for Daniel while he was in the sixth, seventh and eighth grades at the Middle School.

During the 1997-1998 school year as a freshman, Daniel began to experience more problems with his panic disorder due to adolescence and the change to the larger Lewis Central High School, which houses approximately 900 students. Daniel's doctors began experimenting with different dosages and medications to adjust to his changing needs. Daniel was able to take a normal class schedule in regular classrooms during his freshman and sophomore years. He missed 13.5 days of school during his sophomore year.

During his junior year [1999-2000], Daniel missed 48 days of school due to his worsening panic disorder and social phobia. In October 1999, he ran away from school and walked some 12 miles south along the Wabash Trace Bicycle Trail to Mineola, Iowa. He walked the 12 miles back home before his family could find him. Daniel was again hospitalized for eight days, during which he was suicidal. He continued in an outpatient program until the last part of November 1999. His medication was changed and he gradually went back to a full school day.

Upon Daniel's return to school, the District placed him in its Flexible Learning Center ["FLC"], which was then located in the basement of the high school building. Daniel attended classes in the FLC for three hours a day with six to eight students; the rest of the day, he was in regular classrooms. His grades had begun to worsen and he

began getting behind on credits. He continued getting treatment and counseling. In April 2000, Daniel attempted suicide by taking his brother's muscle relaxants. He spent three days in the hospital. Later that month, he went back into the hospital after expressing suicidal plans. By the end of his junior year, Daniel was behind some 21 credits toward graduation. He continued his treatment, medication and counseling.

During the 2000-2001 school year, Daniel began his senior year with all of his time spent in the FLC. The District's FLC was now housed in portable buildings outside of the main high school building. Daniel was in the main high school building only during his lunch period. He didn't eat in the lunchroom due to his social phobia and panic disorder, but spent his lunch hour sitting in the hallway.

During the spring of 2001, Daniel's condition significantly worsened as he realized that he did not have enough credits to graduate with the rest of his classmates. Daniel became agitated and depressed as he received letters about senior pictures, graduation announcements, and college attendance. His medications were increased and he dropped down to five classes per day. During that school year, he was nevertheless determined to get a Lewis Central diploma as his older brothers had.

Daniel began the 2001-2002 school year as a fifth-year senior at the newly constructed Lewis Central High School. The FLC was now located on the second floor of the main building and Daniel was forced to interact with the 900-student population several times each day. His panic disorder worsened due to this added stress. He missed 8 of the first 15 days of the school year. On September 4, 2001, he saw his psychiatrist, who increased his medication to deal with his increased anxieties at school.

On September 14, 2001, Daniel left the school building and walked to his mother's office, where he told her that he just could no longer attend Lewis Central High School. He dropped out of school after that day and has not attended since. He wants to get a high school diploma in a smaller setting with fewer students. Mrs. Rief testified that she and Daniel had toured the Kanesville Alternative High School ["Kanesville"] in the Council Bluff District, which is on a self-contained campus serving about 400 students who attend partial days. There are no more than 100 students in the building at one time and the students are able to do much of their schoolwork at home. The director of Kanesville told Mrs. Rief that there is a slot available for Daniel at the beginning of November 2001.

Daniel saw his psychiatrist and therapist on September 20, 2001. On that date, Mrs. Rief, Daniel, and the doctors discussed Daniel's condition and his educational options including Kanesville. His psychiatrist kept him on the increased dosage and wrote the letter dated September 27, 2001 in which he recommended that Daniel attend Kanesville. On September 20, 2001, Mrs. Rief filed an open enrollment application for

Daniel to attend the Kanesville Alternative High School in the Council Bluffs District as soon as possible.

Superintendent Scott testified that he agrees Daniel's panic disorder, social phobia, and depression would benefit from attending Kanesville. He testified that he believes Daniel's condition worsened with the opening of the District's new high school building this fall. The FLC is now on the second floor, forcing Daniel to interact with the 900-member study population several times a day. He testified that the District has always done everything it could to help Daniel, but that there is no longer anything further that the District can offer him. Because of its FLC, the District has no affiliation with an alternative high school outside the District itself. The Board's decision to deny the open enrollment application was based solely upon the Board's policy never to approve late-filed open enrollment applications.

II.
CONCLUSIONS OF LAW

The issue in this appeal is whether there is legal justification for overlooking the open enrollment deadline to allow Daniel Rief to open enroll to the Council Bluffs District as soon as possible. We conclude that there is for the following reasons. At the time the open enrollment law was written, the legislature recognized that certain events would prevent a parent from meeting the January 1 deadline. Therefore, there is an exception in the statute for two primary groups of late filers: the parents or guardians of children who will enroll in kindergarten the next year and parents or guardians who have good cause for missing the January 1 filing deadline. Iowa Code § 282.18(2), (4) (2001).

The legislature chose to define 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 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 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 section 282.18(16)(2001). The facts in this appeal do not meet the definition of "good cause."

In 1992, the General Assembly amended the open enrollment law to add the following new subsection:

> 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.

Iowa Code § 282.18(18) (2001). The State Board does not often exercise the discretion contained in 282.18(18). It is important that the balancing of interests provided for in the open enrollment statute is followed in most cases. *In re Beth Randolph*, 15 D.o.E. App. Dec. 128 (1998). The State Board has viewed section 282.18(18) as "an award by the legislature of an extraordinary power to be used by the State Board sparingly," and to be used only in cases where "a child's unique situation cries out for state board intervention." *In re Paul Farmer*, 10 D.o.E. App. Dec. 299, 302(1993).

We conclude that the facts in Daniel Rief's appeal present a situation that does cry out for intervention by the State Board through its subsection 18 power. The State Board has exercised its subsection 18[1] power in nine previous cases involving late-filed open enrollment applications. An overview of those cases follows.

The first case involved the stepson of a minister whose study and work had taken him to four different locations in four years. *In re Christopher Forristall*, 10 D.o.E. App. Dec. 262 (1993). Christopher had not weathered the moves well, particularly when he was in a large school. His stepfather was finally assigned to a church in a small community outside of the town of Ft. Dodge but the parsonage was within the school district of Ft. Dodge. Appellant wanted his stepson to attend school in the smaller district of Eagle Grove where his church and community were, but he had missed the June 30 deadline for "good cause" filing. *Id*. at 263. Christopher was entering his junior year, and his parents were convinced he would fare better in Eagle Grove, so they would be applying for open enrollment for his senior year anyway. In order that Chris not attend

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[1] **Formerly referred to as the State Board's "subsection 20" power, this section was renumbered in 1996 to sec. 282.18(18). *See*, 1996 Iowa Acts, chapter 1157, sections 1-3. It is now referred to as the "subsection 18" power.**

five or six different schools in as many years, the State Board used subsection 20 to order his release from Ft. Dodge for his junior year. *Id*. at 267.

The second case justifying the use of this special exception to the normal timelines was one involving a student who moved here from California where he had been living in an abusive situation with an alcoholic mother. *In re Ann and Patrick Taylor*, 10 D.o.E. App. Dec. 285 (1993). Patrick was released by the State Board after he arrived in Iowa to live with his grandparents and older siblings in August, missing the open enrollment deadline. *Id*. at 291. Open enrollment for Patrick was advised to keep the children together as Patrick's older brothers were attending in Lamoni under a sharing agreement. *Id*. at 286.

The third case involved the change in custody of a 15 year-old high school sophomore. *In re Bryan Swift*, 12 D.o.E. App. Dec. 24 (1994). Bryan's parents divorced when he was three years old and the court placed Bryan's physical custody with his mother. As a result of a protracted custody dispute which lasted almost a year, the court modified the custody decree to honor Bryan's wish to live with his father and attend a particular school outside of the father's attendance area. The dispute was not resolved until August 1994. The State Board used subsection 20 to grant Bryan's open enrollment request.

The fourth case decided under subsection 20 was *In re Abrianne Long*, 12 D.o.E. App. Dec. 87 (1994). The facts in the *Long* case are very similar to *Swift*. In *Long*, as in *Swift*, a high school student's change in custody decree was not entered until August. The only distinction between the two cases was the fact that unlike Bryan Swift, who had never attended school in the district to which he open enrolled, Abrianne Long attended all but 3 months (when she was with her mother) in the district to which she open enrolled.

The fifth case decided under subsection 20 was *In re Shawn and Derek Swenson*, 12 D.o.E. App. Dec. 150(1995). Mr. Swenson's divorce decree established him as his sons' custodian and legal guardian in the event of their mother's death. That provision became operative on August 20, 1994, when the boys' mother died of cancer. The boys had lived with their mother in California and were relocated to Cedar Rapids, Iowa, after her death. This occurred very close to the beginning of school. For many reasons, Mr. Swenson had selected the College Community School District as the best place for the boys. The State Board used subsection 20 to grant the Swensons' open enrollment requests.

The sixth case decided under subsection 18 was *In re Bruce Houck Jr.,* 16 D.o.E. App. Dec. 312 (1999). Mr. Houck received custody of his son at the end of November in the 1998-99 school year. Because of the problems that culminated in the change of custody, Mr. Houck needed to transport his son to school in another district. The State

Board granted immediate open enrollment because it was in the best interest of Mr. Houck's son.

The seventh case was *In re Gwenivere and Megan Reimers*, 17 D.o.E. App. Dec. 176(1999). The children in that case had been living with their mother in Nebraska. They were close to their half-sister, Tiffany, who was one year older than Gwenivere and lived with Todd and Starla Reimers in the A-H-S-T Community School District. Tiffany had been open enrolled to Harlan Community School District for the prior two years. The open enrollment to Harlan occurred after a traumatic incident involving Tiffany's mother. After Megan and Gwenivere visited their father at Christmas, the Reimers became aware of the problems the girls were having living with their mother in Nebraska. The girls did not want to return there and the Reimers considered the situation and decided to honor the girls' wishes. They enrolled the girls in Harlan Community School District so they could attend school with Tiffany. They filed for a modification of custody, which the court granted shortly after that. They immediately filed their applications for open enrollment but were denied by the A-H-S-T Board. The facts were found to be very similar to *In re Bruce Houck, Jr.*, 16 D.o.E. App. Dec. 312(1999), where the State Board granted immediate open enrollment after a custody change because it was in the best interest of Mr. Houck's son.

The eighth case was *In re Brian Jeffers*, 18 D.o.E. App. Dec. 95 (2000). It was undisputed in that case that the child's well-documented depression was largely the result of a change in custody due to his parents' separation and divorce. It was also undisputed that his depression worsened when he changed schools in the middle of his second-grade year. The child's doctor concluded that his depression had been improving since changing back to his original school of residence. The State Board concluded that it was in Brian's best interest to continue in the district where his depression had been significantly improving.

The ninth and most recent case was *In re Shawn Crouch*, 18 D.o.E. App. Dec. 381 (2000). In that case, it was undisputed at the appeal hearing that Shawn suffered from severe asthma, which was a life-threatening condition if he was not immediately given appropriate medications by qualified medical personnel. It was also undisputed that the Anita Community School District could not meet his medical needs. The Atlantic Community School District, on the other hand, had a full-time school nurse who could administer necessary medications to Shawn. In addition, the emergency room at the Atlantic Hospital was only two or three minutes away. Shawn's primary care physician's office was also located in Atlantic. The State Board, therefore, concluded that it was in Shawn's best interest to attend the Atlantic Community School District beginning in the 2000-2001 school year.

We conclude that the record from the appeal hearing regarding Daniel Rief's situation, like those described above, presents an appropriate occasion for the use of the State Board's discretionary power under Iowa Code section 282.18 (18) (2001). The record was undisputed that Daniel suffers from panic disorder, social phobia and depression. Daniel's needs are better served in a smaller, self-contained school with fewer students. The record contained a letter from his psychiatrist stating that in his professional opinion, Daniel should attend Kanesville Alternative High School in the Council Bluffs District.

Superintendent Scott testified that he agreed that Daniel would benefit from attendance at Kanesville Alternative High School. The District has nothing further to offer Daniel given his condition. The only reason the Board denied the open enrollment application was that it never approves applications that are filed after January 1.[2] Mrs. Rief could not have met the January 1 deadline because Daniel's condition did not worsen until September 2001, when the District opened its new high school building. We are, therefore, exercising our subsection 18 power to allow him to attend Kanesville Alternative High School in the Council Bluffs District as soon as possible.

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 Lewis-Central Community School District made on October 1, 2001, denying Appellant's open enrollment application for Daniel Rief for the 2001-2002 school year, is hereby recommended for reversal. There are no costs under Iowa Code chapter 290 to be assigned.

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DATE SUSAN E. ANDERSON, J.D.
ADMINISTRATIVE LAW JUDGE

IT IS SO ORDERED.

_____ _____

DATE CORINE HADLEY, PRESIDENT
STATE BOARD OF EDUCATION

[2] **When granting a late application, a Board can state the particular and unique facts of the situation that prompted the Board's approval in the minutes of the Board meeting. Thereafter, the Board will be obligated only to approve future late applications of the same factual nature. In re Shawn & Derek Swenson, 12 D.o.E App. Dec. 150 (1995).**