

**Iowa State Board  
of Education**

(Cite as 20 D.o.E. App. Dec. 87)

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***In re Jacob & Stevie Lushinsky*** :

Brian & Amy Lushinsky, :  
Appellants, :

v. : DECISION

Red Oak Community School District, :  
Appellee. : [Adm. Doc. #4382]

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The above-captioned matter was heard on August 7, 2001, before Susan E. Anderson, J.D., designated administrative law judge. Appellant, Amy Lushinsky, was present telephonically and was unrepresented by counsel. Appellee, Red Oak Community School District [hereinafter, "the District"], was also present telephonically in the person of Sue Wagaman, board secretary and business manager. 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 the 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.

Appellants seek reversal of decisions of the Board of Directors [hereinafter "the Board"] of the District made on June 21, 2001, that denied their open enrollment applications for Jacob and Stevie Lushinsky. At the appeal hearing, oral decisions were issued at the parties' request pursuant to 281 Iowa Administrative Code 6.10. The oral decisions affirmed the Board's denials of the open enrollment applications. Appellants then requested a written decision.

**I.  
Findings of Fact**

Brian and Amy Lushinsky are residents of the Red Oak Community School District. They have two school-aged children: Jacob and Stevie. Jacob will begin fourth grade in the 2001-2002 school year. Stevie will begin first grade in the 2001-2002 school year.

The District's elementary school attendance centers are all located in Red Oak, but are assigned to separate buildings as follows: grades K-1 at Bancroft Elementary; grade 2 at Webster Elementary; grade 3 at Inman Elementary; and grades 4 and 5 at Washington Elementary.

On April 10, 2001, the District received the open enrollment applications for Jacob and Stevie to attend the Stanton District beginning in the 2001-2002 school year. On the application, Appellants listed their reasons for seeking open enrollment for them as follows: "Not happy with Red Oak Schools."

The Board met on June 12, 2001, and denied Appellants' open enrollment applications for Jacob and Stevie because they were filed late without good cause. Appellants then filed this appeal with the State Board of Education.

Mrs. Lushinsky testified at the appeal hearing that prior to December 2000, Jacob was open enrolled to the Stanton District, where he attended kindergarten, first grade, second grade and the first part of third grade. Stevie had been open enrolled to the Stanton District for the first part of kindergarten. She testified that in December 2000, the family lost their daycare provider and could no longer get the children back and forth to school in Stanton. The children then stopped attending school in Stanton and began attending school in Red Oak. Mrs. Lushinsky testified that she knew at the time she transferred them that Red Oak was not a satisfactory district for her kids due to her low opinion of its curriculum and academic standards. She transferred them only because she didn't have any other choice due to the daycare situation.

One day in the last part of April or the first part of May 2001, Jacob was in his third-grade classroom at Red Oak. Mrs. Lushinsky testified that, according to Jacob, he asked his teacher if he could go to the bathroom and stood up to do so. Mrs. Lushinsky testified that, according to Jacob, his teacher then grabbed his arm and threw him back in his chair, leaving bruises on the upper part of Jacob's left arm. Mrs. Lushinsky testified that she has filed criminal charges against the teacher, but she doesn't know if the county attorney's office has done anything about it. She testified that she also reported the incident to the District. The District immediately switched Jacob into another third-grade teacher's classroom and did an internal investigation of the first teacher's conduct. Mrs. Lushinsky testified that she had called the State Board of Educational Examiners, but decided not to pursue a complaint against the teacher with that Board.

Jacob finished his third-grade year at Red Oak with no problems in the new teacher's classroom; Stevie finished her kindergarten year at Red Oak. Stevie had no problems in kindergarten in the District, but Mrs. Lushinsky fears that Stevie's experience will be the same as Jacob's. Neither Jacob nor Stevie have had any counseling, medical problems or academic problems.

Board Secretary Wagaman testified that the Board has always denied late-filed open enrollment applications in the absence of good cause. She further testified that the District's internal investigation of the teacher's conduct showed that "there was no evidence of abuse founded". She also testified that Jacob will not again be in the same building with that teacher because he will move to a different attendance center in fourth grade.

## II. CONCLUSIONS OF LAW

The State Board of Education has been directed by the Legislature to render decisions that are "just and equitable" [Iowa Code section 290.3(2001)], "in the best interest of the affected child" [Iowa Code section 282.18(18)(2001)], and "in the best interest of education" [281 Iowa Administrative Code 6.17(2)]. The test is *reasonableness*. Based upon this mandate, the State Board's standard of review is:

A local school board's decision will not be overturned unless it is "unreasonable and contrary to the best interest of education."

*In re Jesse Bachman*, 13 D.o.E. App. Dec. 363, 369(1996).

In this appeal, the State Board is asked to determine whether the Board's decisions to deny the open enrollment applications for Jacob and Stevie Lushinsky were reasonable exercises of its authority. We conclude that they were reasonable decisions for the following reasons.

The Open Enrollment Law was written to allow parents to maximize educational opportunities for their children. Iowa Code section 282.18(1)(2001). However, in order to take advantage of the opportunity, the law requires that parents follow certain minimal requirements, including filing the application for open enrollment by January 1 of the preceding school year. Iowa Code section 282.18(2)(2001).

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 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 filing deadline. Iowa Code sections 282.18(2) and (16)(2001).

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 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 or 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 if applicable to the circumstances.

Iowa Code section 282.18(16) (2001).

The Iowa Legislature did, however, also provide in Iowa Code section 282.18(18) (2001), 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.

*Id.*

Appellants' open enrollment applications for Jacob and Stevie were received by the District on April 10, 2001, well after the January 1 deadline. The evidence showed no basis for statutory "good cause." A change in a family's daycare situation does not meet the definition of "good cause."

In addition, Jacob's experience with his third-grade teacher and Mrs. Lushinsky's fears that Stevie might somehow have a similar experience, do not present cases that cry out for the State Board's intervention through subsection 282.18(18). The

evidence in the record was undisputed that the District had switched Jacob to another third-grade teacher's classroom immediately after this incident. The District also conducted an internal investigation of the incident and found that "there was no abuse founded." Jacob will not be in the same building with that teacher when he goes to fourth grade in a different building. Stevie has experienced no problems at all in the District.

The Board's denials of the open enrollment applications on the basis they were filed late without good causes were, therefore, reasonable.<sup>1</sup>

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

### III. DECISION

For the foregoing reasons, the decisions of the Board of Directors of the Red Oak Community School District, made on June 21, 2001, that denied open enrollment for Jacob and Stevie Lushinsky, are hereby recommended for affirmance. There are no costs of this appeal to be assigned.

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DATE

It is so ordered.

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

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DATE

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GENE VINCENT, VICE-PRESIDENT  
STATE BOARD OF EDUCATION

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<sup>1</sup> Appellants are reminded that the deadline for open enrollment applications for the 2002-2003 school year is January 1, 2002.