

**IOWA STATE BOARD
OF EDUCATION
(Cite as 20 D.o.E. App. Dec. 41)**

In re Courtney & Gabriel Hagen

Daniel & Christy Hagen,	:	
Appellants,	:	
	:	
v.	:	DECISION
	:	
Lewis-Central Community School	:	
District,	:	
Appellee.	:	

[Admin. Doc. #4370]

The above-captioned matter was heard telephonically on July 12, 2001, before Susan E. Anderson, J.D., designated administrative law judge. Appellant, Christy Hagen, was present and was unrepresented by counsel. Appellee, Lewis-Central Community School District [hereinafter, "the District"], was present in the persons of Charles Scott, superintendent; and Anna Boehm, board secretary. 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.

Appellants seek reversal of decisions made on May 21, 2001, by the Board of Directors [hereinafter, "the Board"] of the District which denied their late-filed open enrollment applications for Courtney and Gabriel Hagen.

**I.
FINDINGS OF FACT**

Appellants, Christy and Daniel Hagen, reside in the District with their children, Courtney and Gabriel. Courtney will be a junior and Gabriel will be a sophomore in the 2001-2002 school year. On May 21, 2001, the Hagens filed open enrollment applications for both children to attend school next year in the Council Bluffs District.

At the appeal hearing, Mrs. Hagen submitted a written report from a licensed psychologist, which states, in pertinent part:

Gabe has been diagnosed with Obsessive-Compulsive Disorder, Attention-Deficit/Hyperactivity Disorder, and Anorexia. For about one month, Gabe had to be fed through a feeding tube, which was removed April 23, 1998. Gabe has been treated by a pediatric cardiologist because of problems relating to Gabe's not eating.

(Dr. Brody letter, 6/10/98.)

According to Mrs. Hagen's testimony, Gabriel's Attention Deficit Hyperactivity Disorder ["ADHD"] is in the areas of receptive and expressive brain processing. Ms. Hagen testified that Gabriel requires a lot of sleep and careful monitoring so that his anorexia does not relapse. Gabriel's condition caused him to miss five days of school in the first trimester and ten days in the second trimester of the 2000-2001 school year. Mrs. Hagen testified that Gabriel's grades are affected by his ADHD and medical problems. Mrs. Hagen is a social worker, and she gives him counseling at home.

Lewis-Central High School operates on a trimester system with six class periods per day of 60 minutes each. During the first trimester of his freshman year, he earned an A, A-, B+, B-, C- and a D. In the second trimester, he earned an A, A, B, B, C, and an F. That semester, he failed Algebra, which he attended during the sixth class period of the day when it was particularly difficult for him to concentrate on a complex subject like Algebra. Mrs. Hagen testified that she had talked to the high school counselor prior to the second trimester in an attempt to schedule Gabriel's Algebra class for earlier in the day. The counselor had responded that it was not possible.

After receiving Gabriel's grades for the second trimester, the Hagens decided to homeschool Gabriel for the remainder of the school year. They filed an open enrollment application for Gabriel to attend the Council Bluffs District for the next year largely due to the fact that Council Bluff's high school operates on a semester basis with block scheduling. Mrs. Hagen has researched the benefits of block scheduling for ADHD students. The Hagens believe that block scheduling of four classes a day for 90 minutes each will better accommodate Gabriel's ADHD by allowing him to concentrate for longer periods of time without as many stressful transitions to different subjects each day.

Mrs. Hagen testified that Courtney has no health problems or learning disorders. They sought open enrollment for her to attend Council Bluffs mostly because they believe that block scheduling would allow her more time to study and because they would depend upon her to transport Gabriel to school in Council Bluffs.

Superintendent Scott testified that he is a proponent of block scheduling and that he does not dispute that Gabriel's ADHD would benefit from block scheduling. The Board's decisions to deny the open enrollment applications were based upon the Board's policy not to approve late-filed open enrollment applications.

At the end of the appeal hearing, the administrative law judge left the record open to allow Mrs. Hagen an opportunity to submit any of the following documentation in support of her appeal: attendance records, transcripts, psychiatrist reports, psychologist reports, and opinions or research supporting her position that block scheduling would benefit Gabriel's learning disorder and medical condition. The administrative law judge later received a psychologist's report which confirmed that Gabriel had been diagnosed with ADHD and anorexia, but which did not discuss any link between his condition and block scheduling. Attendance records and grades were also submitted.

II. CONCLUSIONS OF LAW

At the time the open enrollment law was written, the legislature apparently 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).

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 has exercised its subsection 18¹ power in nine previous cases involving late-filed open enrollment applications. 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 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.

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.

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 Abrienne 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, Abrienne 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 Gabriel Hagen's situation, unlike those described above, does not present 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 Gabriel has ADHD and is at risk for anorexia. However, the record contained no medical records, scholarly research or opinions from health care professionals stating that Gabriel's conditions could benefit from block scheduling in the Council Bluffs District.²

Courtney Hagen's situation also does not cry out for State Board intervention. It is undisputed that Courtney has no medical problems or learning disorders that could be improved through the different schedule at Council Bluffs.

² Appellants are reminded that the open enrollment deadline for the 2002-2003 school year is January 1, 2002.

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

**III.
DECISION**

For the foregoing reasons, the decisions of the Board of Directors of the Lewis-Central Community School District made on May 21, 2001, denying Appellants' late-filed open enrollment applications for Courtney Hagen and Gabriel Hagen for the 2001-2002 school year, are hereby recommended for affirmance. There are no costs under Iowa Code chapter 290 to be assigned.

DATE

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

IT IS SO ORDERED.

DATE

CORINE HADLEY, PRESIDENT
STATE BOARD OF EDUCATION