

**IOWA STATE DEPARTMENT  
OF EDUCATION  
(Cite as 20 D.o.E. App. Dec. 1)**

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<b>In re Colby Miller</b>	:	
Krystal Miller, Appellant,	:	
v.	:	DECISION
Twin River Valley Community School District, Appellee.	:	
		[Admin. Doc. #4346]

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The above-captioned appeal was heard telephonically on June 6, 2001, before Susan E. Anderson, designated administrative law judge, presiding. Appellant Krystal Miller was present and was unrepresented by counsel. Appellee, Twin River Valley Community School District [hereinafter, “the District”], was present in the person of James Kenton, 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 March 12, 2001, which denied her timely-filed open enrollment application for her son, Colby, beginning in the 2001-2002 school year. The Board’s denial was based on a determination that open enrollment is not available for kindergarten preparatory programs.

**I.**

**FINDINGS OF FACT**

Krystal Miller and her children, Colby and Bailey, are residents of the District. Colby will be five years old on July 14, 2001. Mrs. Miller testified that although he will be old enough, he is not ready to attend a regular kindergarten program in the 2001-2002 school year. Mrs. Miller decided to send Colby to a kindergarten preparatory program. The District’s regular kindergarten is an all-day program. It also offers a kindergarten preparatory program to children who will be five years old by September 15. The students in that program attend the same classroom and have the same teacher as the

regular kindergartners, but they attend only half-days, in the afternoons. The District's regular kindergarten class will have four students in the 2001-2002 school year. Colby would be the only child attending the kindergarten preparatory program in the afternoon.

Mrs. Miller teaches third grade in the Humboldt Community School District. Her older daughter, Bailey, is already open-enrolled there. On March 10, 2001, Mrs. Miller timely filed an open enrollment application for Colby to attend class in the Humboldt District, beginning with its kindergarten preparatory program in the 2001-2002 school year. Humboldt's kindergarten preparatory program is an all-day class with a separate classroom and a separate teacher from its regular all-day kindergarten program. Colby would not be the only student in Humboldt's kindergarten preparatory program.

The Twin River Valley Community School District Board denied Mrs. Miller's open enrollment application for Colby at its meeting on March 12, 2001, on the basis that open enrollment is not available for kindergarten preparatory programs. Mrs. Miller appealed to the State Board of Education.

Superintendent Kenton testified at the appeal hearing that the Board's denial was based on its belief that the open enrollment law does not cover kindergarten preparatory programs. He testified that the District counts students enrolled in its kindergarten preparatory program as long as they are age-eligible by turning five years old by September 15 of the pertinent school year. The District does not have a desegregation plan.

## **II. CONCLUSIONS OF LAW**

The issue raised in this appeal is whether the open enrollment law includes kindergarten preparatory programs for children who are five years old before September 15. This is the first time that this issue has been presented to the State Board of Education.

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

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(1996).

Parents must file open enrollment requests by the deadline of January 1 of the year preceding the school year for which open enrollment is requested. Iowa Code section 282.18(2) (2001). However, 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 who have "good cause" for missing the January 1 filing deadline. Iowa Code sections 282.18(2) and (16) (2001).

The Iowa open enrollment law creates a right for students to attend school outside their resident school districts if their applications are filed in a timely manner. The applicable deadline for kindergarten students is described in 281—Iowa Administrative Code 17.7 as follows:

... a parent/guardian requesting to enroll a kindergarten pupil in a district other than the district of residence may make such application on or before the Thursday before the third Friday of September of that school year.

*Id.* Iowa Code section 282.3(2)(2001) states, in pertinent part, as follows:

2. The conditions of admission to public schools for work in the year immediately preceding the first grade and in the first grade shall be as follows:

A child under the age of six years on the fifteenth of September of the current school year shall not be admitted to a public school unless the board of directors of the school has adopted and put into effect courses of study for the school year immediately preceding the first grade, approved by the department of education, and has employed a practitioner or practitioners for this work with standards of training approved by the board of educational examiners.

No child shall be admitted to schoolwork for the year immediately preceding first grade unless the child is five years of age on or before the fifteenth of September of the current school year.

*Id.* Iowa Code section 282.18(1)(2001) states:

It is the goal of the general assembly to permit a wide range of educational choices for children enrolled in schools in this state and to maximize ability to use those choices. It is therefore the

intent that this section be construed broadly to maximize parental choice and access to educational opportunities which are not available to children because of where they live.

*Id.*

The above statutes do not limit the programs which an age-eligible child may attend through open enrollment. To the contrary, the Legislature specifically stated that the open enrollment law is to “be construed broadly to maximize parental choice and access to educational opportunities to which are not available to children because of where they live.” *Id.* We conclude that the open enrollment law does include kindergarten preparatory programs for age-eligible students.

The issue before us is whether the District’s Board reasonably denied Mrs. Miller’s timely-filed open enrollment application for her son, Colby, to attend Humboldt’s kindergarten preparatory program. It is undisputed that the open enrollment application for Colby was filed in a timely manner. It is also undisputed that Colby will be five years old before September 15, 2001. He is subject to the open enrollment law regardless of whether the program his parents want him to attend is regular or preparatory kindergarten. The Board’s denial of his open enrollment application was, therefore, unreasonable.

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 Twin Rivers Valley Community School District made on March 12, 2001, that denied Krystal Miller’s timely-filed application for open enrollment for her son, Colby, is hereby recommended for reversal. There are no costs of this appeal to be assigned.

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DATE

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

It is so ordered.

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DATE

CORINE HADLEY, PRESIDENT  
STATE BOARD OF EDUCATION