Iowa State Board of Education

(Cite as 19 D.o.E. App. Dec. 318)

In re Brendan Madden Grady	:	
Timothy Grady and Kathleen Granger, Appellants,	:	
v.	:	DECISION
Boyer Valley Community School District,	:	
Appellee.	:	[Adm. Doc. #4367]

The above-captioned matter was heard on July 10, 2001, before Susan E. Anderson, J.D., designated administrative law judge. Appellants, Timothy Grady and Kathleen Granger, were present telephonically and were unrepresented by counsel. Appellee, Boyer Valley Community School District [hereinafter, "the District"], was also present telephonically in the person of Dave Thomas, 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 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 a decision of the Board of Directors [hereinafter "the Board"] of the District made on May 21, 2001, that denied their open enrollment application for Brendan Madden Grady. At the appeal hearing, an oral decision was issued at the parties' request pursuant to 281 Iowa Administrative Code 6.10. The oral decision affirmed the Board's denial of the open enrollment application. Appellants then requested a written decision.

I.
Findings of Fact

Timothy Grady and Kathleen Granger are residents of the Boyer Valley Community School District. They moved into the District in August 2000. They have two school-aged children: Desmond and Brendan. Brendan will begin third grade in the 2001-2002 school year and is the subject of this appeal.

The Boyer Valley District's attendance center for grades K-2 is located in Dunlap. The District's attendance center for grades 3-6 is located in Dow City. While in second grade last school year, Brendan rode a bus from home to the Dunlap attendance center. While in third grade next year, Brendan would ride a route bus from home to Dunlap, where he would board a shuttle bus that would take him to the Dow City attendance center.

Desmond is older than Brendan and has already been open enrolled out to the East Monona District, where he attended last year as a fifth grader. Ms. Granger testified that the family open enrolled Desmond largely due to problems he had while riding the District's shuttle bus between Dunlap and Dow City. Desmond's open enrollment application was approved by the Boyer Valley Board in August 2000 even though it was filed late, because the family had just moved into the District, which constituted good cause. Other students' open enrollment applications were also approved during and before August 2000 even though they were filed late without good cause.

Superintendent Thomas testified that five applications at the August 2000 meeting were approved by board members 5-1 even though they were filed late without good cause. Superintendent Thomas testified that those five applications were approved because "the parents had looked the board members in the eye and begged".

On May 1, 2001, the Boyer Valley District received the open enrollment application for Brendan Grady to attend East Monona beginning in the 2001-2002 school. On the application, Appellants listed their reasons for seeking open enrollment for Brendan as follows: "Join his brother, class size and curriculum, safety concerns re shuttle bus and academic standards".

The Board met on May 21, 2001, and denied Appellants' application for Brendan because it was filed late without good cause. Appellants then filed this appeal with the State Board of Education.

Kathleen Granger testified at the appeal hearing that in April of 2001, her employment status changed from part-time to full-time in Moorhead, Iowa, where the East Monona District's school is located. She also testified that she fears that Brendan will experience teasing on the shuttle bus when he starts third grade. Brendan has not yet ridden the shuttle bus to Dow City because he is not yet in third grade, but she fears that his experience will be the same as Desmond's. She also fears that unruly students could distract the bus driver and cause an accident. She testified that Brendan had backpacks thrown at him, had been pushed into the aisles, and had his hair yanked while riding the bus. She further testified that Brendan didn't like to ride the route bus from home to Dunlap last year because of name calling ("stupid", "little punk", "dummy", "brat") he experienced on the bus while in second grade. On one occasion in May 2000, Brendan decided to walk three miles to his babysitter's house outside of Dunlap rather than ride the bus. Ms. Granger told the principal about that incident. Throughout the 2000-2001 school year, probably 3 or 4 times, she talked to the bus driver/ transportation director about her concerns.

Brendan has had no counseling, medical problems or academic problems. Ms. Granger further testified that she thinks that the third grade teacher at East Monona is better than the one at Boyer Valley. She also testified that the class size at Boyer Valley would be greater than 20 students; at East Monona, it would be 13 or 14 students.

Superintendent Thomas testified that the bus driver/transportation director had not observed any problems while Brendan was riding the bus. He testified that there are two video cameras that are rotated onto the District's buses and that he had viewed a tape of the bus behavior at the time when Desmond was riding the bus and did not observe any problems. Superintendent Thomas testified that he had not heard of Ms. Granger's concerns for Brendan on the bus until the date of the appeal hearing. He stated that he would view a tape from Brendan's bus after the hearing.

Superintendent Thomas further testified that in the past, the Board had sometimes approved late-filed open enrollment applications, but it had decided to discontinue that practice and enforce the deadlines in the law. He testified that this policy change occurred at the December 21, 2000, Board meeting when the Board did an "emergency first and second reading of the open enrollment out policy" to no longer approve late-filed applications. Kathleen Granger was present and participated at that Board meeting according to Superintendent Thomas by stating that she thought the deadline should be later than the January 1 statutory deadline. Ms. Granger testified that she didn't know about the revised policy even though she spoke at the meeting against it. Superintendent Thomas testified that the revised policy and its emergency reading were reaffirmed at the Board's January 15, 2001 meeting, which Ms. Granger also attended.

Ms. Granger testified that she knew about the open enrollment deadlines. She did not file the open enrollment application for Brendan until May 2001, after she learned that her employment status would change from part-time to full-time in Moorhead. She testified that this was the principal reason for filing the open enrollment application. Also, she didn't know for sure where the attendance center for third grade was going to be until after the January 1 deadline.

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 decision to deny the open enrollment application for Brendan Madden Grady was a reasonable exercise of its authority. We conclude that it was, 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 application for Brendan was received by the District on May 11, 2001, well after the January 1 deadline. The evidence showed no basis for statutory "good cause". A change in the employment status of a parent does not meet the definition of "good cause". In addition, the teasing on the bus last year and the fear of teasing on the shuttle bus next year do not present a case that cries out for the State Board's intervention through the exercise of subsection 282.18(18). Ms. Granger had concerns about the bus behavior before January 2001 and, therefore, could have filed before the deadline. Appellants, however, maintain that the application should have been approved because the Board had set a precedent of approving late-filed applications.

The State Board has stated on several occasions that when boards grant late-filed open enrollment applications, they should record in the minutes of the meeting the particular and unique facts of the situation that prompted the approval. When they do this, boards will then be obligated to approve only those future, late-filed applications of the same factual nature. *In re Megan and Tony Feldmann*, 18 D.o.E. App. Dec. 102 (2000); *In re Melissa J. Van Bemmel*, 14 D.o.E. App. Dec. 281(1997); *In re Shawn and Derrick Swenson*, 12 D.o.E. App. Dec. 150 (1995).

Superintendent Thomas testified that the Board decided, sometime after August 2000, to discontinue its practice of making exceptions to the open enrollment application deadlines and to enforce them. If a board wishes to change its position regarding late-filed open enrollment applications, it must do so in a manner that is reasonable and provides for sufficient notice to

the parents in the district so they will be able to file their applications on time. This means boards that have previously granted late-filed applications as a matter of policy or practice need to state clearly in the minutes of a board meeting, or in written notice to the public, that it will no longer approve late-filed applications. *Feldmann, supra; In re Jason and Joshua Toenges*, 15 D.o.E. App. Dec. 22 (1997).

At the December 2000 meeting, the Board read its revised policy to change its past practice and policy. Ms. Granger attended that meeting and she had actual knowledge of the Board's change of policy before the January 1 deadline. Although she knew about the change and about the teasing on the bus before January 1, she did not file the open enrollment application until May 7, 2001.

Appellants were, therefore, not justified in expecting that their late-filed application would nevertheless be approved. The Board's denial on May 21, 2001, was reasonable.[1]

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

III.
DECISION

For the foregoing reasons, the decision of the Board of Directors of the Boyer Valley Community School District, made on May 21, 2001, that denied open enrollment for Brendan Madden Grady, is hereby recommended for affirmance. There are no costs of this appeal to be assigned.

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

It is so ordered.

_____ _____
DATE CORINE HADLEY, PRESIDENT
STATE BOARD OF EDUCATION

[1] **Appellants are reminded that the deadline for open enrollment applications for the 2002-2003 school year is January 1, 2002.**