

**IOWA STATE BOARD
OF EDUCATION
(Cite as 18 D.o.E. App. Dec. 381)**

In re Shawn David Crouch

Kathy Crouch,	:	
Appellant,	:	
	:	
v.	:	DECISION
	:	
Anita Community School District,	:	
Appellee.	:	

[Admin. Doc. #4222]

The above-captioned matter was heard telephonically on May 24, 2000, before Susan E. Anderson, J.D., designated administrative law judge. Appellant, Kathy Crouch, was present and was unrepresented by counsel. Appellee, Anita Community School District [hereinafter, "the District"], was present in the person of Dan Crozier, 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(1999). 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 February 21, 2000, decision of the Board of Directors [hereinafter, "the Board"] of the District which denied her late-filed open enrollment application for her son, Shawn Crouch.

**I.
FINDINGS OF FACT**

Appellant Kathy Crouch is the mother of Shawn Crouch. At the time of the appeal hearing, Shawn was a sixth-grader attending the Anita Community School District. The Crouch family has not changed residence in the past two years. Shawn is currently 11 years old and has suffered from severe bronchial asthma for the past 10 years. His condition has progressively worsened throughout his life and has now reached the point where it is life-threatening if he does not receive immediate medications and treatment, involving a nebulizer and other medical equipment.

During the spring semester of the 1999-2000 school year, Shawn's condition had caused him to miss at least 54 days of schools. On 38 of those 54 days, Shawn stayed at home to receive medications from his mother because the Anita School District has no

school nurse and the rescue squad personnel in Anita are not qualified to administer his medications. The City of Anita has no hospital. Although earlier in the year, Shawn's mother was sometimes able to get to the Anita Elementary School to administer Shawn's medications herself, she is no longer able to do so because she is awaiting a lung transplant.

The nearest hospital to Anita is in Atlantic, Iowa, nearly 13 miles away. Mrs. Crouch filed an open enrollment application for Shawn to attend school beginning with his seventh-grade year in the Atlantic Community School District, which employs a full-time school nurse who would be able to administer any necessary medications to Shawn to treat his severe asthma. The hospital in Atlantic is only two or three minutes away in case of an emergency.

In addition, Shawn's primary care physician is located in Atlantic. Her name is Dr. Elaine K. Berry. Dr. Berry wrote a letter dated March 20, 2000, which was submitted as evidence and contains the following language about Shawn:

To Whom It May Concern,

Shawn Crouch is a patient of mine who receives most of his care from specialists in Omaha. He unfortunately suffers from severe asthma, and his care involves inhaled medicines. He needs to receive these medications during the day at school. It is my understanding that the Anita School System is unable to handle these because there is not a nurse on staff to properly administer the medicines and watch for side effects, etc. Therefore it is in this child's best overall interest that he transfer to a school where a nurse is present and he can receive the medications that he needs. Shawn's mother is unable to come to school herself regularly due to her own current health needs. We ask for special consideration to expedite this student's transfer to Atlantic school.

(Appellant's Exh. #1.)

Superintendent Crozier testified that he agreed that the Anita Community School District did not have adequate medical personnel or equipment to administer to Shawn's life-threatening needs. He stated that the District wants what is best for Shawn. The Board decision to deny the open enrollment application was based upon the Board's policy not to approve late-filed open enrollment applications.

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) (1999).

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 and before June 30. 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)(1999).

The applications for open enrollment under this good cause exception must be filed by June 30 of the year preceding the school year for which open enrollment is sought. 281 Iowa Administrative Code 17.4(2).¹ By the time Mrs. Crouch and Shawn's doctors realized the extent to which his condition had worsened in the spring semester

¹ Effective April 12, 2000, the departmental rules have been amended to remove the June 30 deadline for good cause exceptions, and the deadline is now the Thursday before the third Friday in September of the following school year. However, for the purposes of this appeal, the June 30 deadline was in place.

of 2000, the January 1, 2000, deadline for open enrollment applications had passed. However, Mrs. Crouch filed the open enrollment application in February, well before the June 30 good cause exception deadline. Under the current applicable departmental rules governing open enrollment, we conclude that there is no provision that addresses a situation like Shawn's. The definition of good cause does include "a similar set of circumstances consistent with the definition of good cause". But the definition of "good cause" is directly tied to some change in a child's residence. There has been no change in Shawn's residence. However, the State Board has been given the power to exercise its discretion in appropriate circumstances.

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) (1999).

The State Board has exercised its subsection 18² power in eight previous cases. 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

² 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.

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 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). That appeal involved facts similar to the present situation. 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 and most recent 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 present situation, like those described above, presents an appropriate occasion for the use of the State Board's discretionary power under subsection 18. It was undisputed at the appeal hearing that Shawn suffers from severe asthma, which is a life-threatening condition if he is not immediately given appropriate medications by qualified medical personnel. It was also undisputed that the Anita Community School District cannot meet his medical needs. The Atlantic Community School District, on the other hand, has a full-time school nurse who can administer necessary medications to Shawn. In addition, the emergency room at the Atlantic Hospital is only two or three minutes away. Shawn's primary care physician's office is also located in Atlantic.

We conclude that it is in Shawn's best interest to attend the Atlantic Community School District beginning in the 2000-2001 school year. It is, therefore, appropriate for the State Board to exercise its authority under Iowa Code section 282.18(18)(1999) to reverse the District Board's denial of Appellant's application for open enrollment for Shawn David Crouch to the Atlantic Community School District.

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 Anita Community School District made on February 21, 2000, denying Appellant's late-filed open enrollment application for Shawn David Crouch for the 2000-2001 school year, is hereby recommended for reversal. 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