

**Iowa State Board
of Education**
(Cite as 18 D.o.E. App. Dec. 259)

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| <i>In re Michael Pals</i> | : | |
| Jackie Pals, Appellant, | : | |
| v. | : | DECISION |
| Grand Community School District, Appellee. | : | |
| | | [Adm. Doc. #4182] |

The above-captioned matter was heard on February 3, 2000, before Susan E. Anderson, J.D., designated administrative law judge. The Appellant, Jackie Pals, was "present" telephonically and was represented by Attorney Ben T. Doran of Quinn, Doran and Anderson of Boone, Iowa. Appellee, Grand Community School District [hereinafter, "the District"], was also "present" telephonically in the person of Linda Hartman, superintendent. The District was 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 (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.

The Appellant seeks reversal of a decision of the Board of Directors [hereinafter "the Board"] of the District made on October 20, 1999, that denied open enrollment for her son because it was untimely filed.

**I.
Findings of Fact**

Appellant, Jackie Pals, lives in Pilot Mound and is a resident of the Grand Community School District. The District educates its resident students in grades K-6 at its elementary school in Boxholm. Its students in grades 7-12 attend the Ogden Community School District through a sharing agreement that will expire at the end of the 1999-2000 school year. Beginning with the 2000-2001 school year, the District's 7-12 grade students will attend the Southeast Webster Community School District under terms of a new sharing agreement.

Ms. Pals has legal custody of her two children, Michelle and Michael, who live with her. Michelle is in the fourth grade in the Boone Community School District, and Michael is in kindergarten, also in the Boone District. Appellant and her children moved from Boone to Pilot Mound in August 1996, following her divorce. At that time, she applied for open enrollment so that Michelle could continue to attend school in Boone. That request was approved, and Michelle has continued to attend the Boone District.

At the beginning of the 1999-2000 school year, Ms. Pals enrolled Michael in the Boone District. She testified that she forgot to apply for open enrollment for him. In Mid-September of 1999, she received a telephone call from Donald Hansen, superintendent of the Boone District. He told her that Linda Hartman, superintendent of the Grand District, had informed him that Michael was a resident of her district and was attending the Boone schools without having been approved for open enrollment. Superintendent Hansen agreed to let Michael remain in the Boone schools until his enrollment status was settled. Appellant then filed an open enrollment application for the 1999-2000 school year with the District. It was received on October 19, 1999. The District Board met on October 20, 1999, and denied the application for being untimely filed. The Board has approved Michael's open enrollment to Boone for the 2000-2001 school year.

Appellant maintains that the Board's decision to deny the 1999-2000 application should be reversed because "good cause" exists and because of the Board's past practice of approving untimely filed applications. As "good cause," Appellant cited her ability to drive the children to and from school, the proximity of their schools to her place of employment, the established childcare arrangements in Boone, the lack of childcare in the District and the desirability of having both children enrolled in the same district.

As evidence of the Board's past practice of approving untimely filed applications, Appellant submitted a sheet of paper with the heading "Students Approved for Open Enrollment from Grand to Ogden after the Deadline." On it are the names of seven students, their respective grade levels and the date on which each was approved for open enrollment to Ogden. (Appellant's Exh. 4.) The open enrollment applications for two of those students, John and Erin Petty, one a fifth grader and one a second grader, were filed on June 5, 1997. "Convenience" was given as the primary reason for filing after January 1. (Appellant's Exhibits 1 & 2.) The minutes of the Board's June 18, 1997, meeting show the unanimous vote to approve those applications. (Appellant's Exh. 3.)

Linda Hartman, superintendent of the Grand District, testified concerning the Board's policies and action concerning open enrollment. Regarding Appellant's Exhibit 4, she agreed that the applications for the Petty children were approved despite being untimely filed. In response to a question from Mr. Doran, Superintendent Hartman testified that at its August 18, 1999, meeting the Board approved open enrollment applications for nine students in grades 7-12 to attend Southeast Webster for the 1999-2000 school year and that these applications had been untimely filed. She testified that the Board acted on advice from the Iowa Department of Education that the Board could do this. (Appellee's Exhibit 1).¹

The Board's policy on open enrollment was enunciated at its July 30, 1997, meeting, when the following motion unanimously carried:

... the Board will stand together to uphold the state guidelines regarding open enrollment including transportation issues.

(July 30, 1997, Bd. Min.)

Since the adoption of this Motion, the Board has not approved untimely filed open enrollment applications for elementary (K-6) students.

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(1999)]; "in the best interest of the affected child" [Iowa Code section 282.18(18)(1999)]; and "in the best interest of education" [281 Iowa Administrative Code 6.11(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).

¹ This advice was incorrect, but does not exempt the Board from acting within the law.

The Open Enrollment Law was written to allow parents to maximize educational opportunities for their children. Iowa Code section 282.18(1)(1999). 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)(1999).

At the time the Open Enrollment Law was written, 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)(1999).

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 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).

Ms. Pals' open enrollment request for Michael was received by the District on October 19, 1999, well past the January 1 deadline for regular applications and the June 30 deadline for "good cause" applications. There is no dispute that it was untimely filed. During the appeal hearing, Appellant maintained that "good cause" exists to reverse the Board's denial of her application. The reasons given, however, do not meet the definition of "good cause" contained in the Iowa Code. Nor do they constitute a "similar set of circumstances consistent with the definition of good cause." Even if the reasons did constitute statutory good cause, the June 30 deadline for applications would still apply.

Appellant also maintained that the Board's decision should be reversed because the Board had established a precedent of approving late-filed applications. The evidence supports this position. It is undisputed that the Board approved the late-filed applications for the Petty children in 1997 and for nine students in August 1999.

In July 1997, the Board adopted a motion stating that it would "uphold the state guidelines regarding open enrollment." (July 30, 1997, Bd. Min., *supra*.) The State Board has previously ruled that 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 sufficient notice to the parents in the district so they will be able to file their applications on time. This means that 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. *In re Jason and Joshua Toenges*, 15 D.o.E. App. Dec. 22(1997). The Board's motion, as recorded in the July 1997 Board minutes, does not specifically state that the Board will no longer approve late-filed applications and is, therefore, insufficient notice to the public.

At its August 1999 meeting, the Board approved the late-filed open enrollment applications of nine students to attend Southeast Webster for the 1999-2000 school year. The State Board has stated on several occasions that when boards grant late-filed open enrollment applications, they should record the specific 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 Melissa J. Van Bommel*, 14 D.o.E. App. Dec. 281(1997); *In re Sharon and Derrick Swenson*, 12 D.o.E. App. Dec. 150(1995). There is no evidence that the Board did this when approving the Petty children's applications in July 1997 or the nine applications in August 1999.

Because of the Board's past practice of approving late-filed open enrollment applications and the absence of sufficient public notice that it would no longer do so, the Board's denial of Appellant's application fails the test of reasonableness.

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 Grand Community School District, made on October 20, 1999, denying the Appellant's open enrollment application for being filed late, is hereby recommended for reversal. 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