IOWA STATE DEPARTMENT
OF EDUCATION
(Cite as 18 D.o.E. App. Dec. 131)

In re Marcelious Nickelson	:	
Anntoinette Jolley, Appellant,	:	
v.	:	DECISION
Ackley-Geneva Community School District, Appellee.	: :	
		[Admin. Doc. #4176]

The above-captioned matter was heard telephonically on December 15, 1999, before Susan E. Anderson, J.D., designated administrative law judge. Appellant, Anntoinette Jolley, was present telephonically and was unrepresented by counsel. Appellee, Ackley-Geneva Community School District [hereinafter, "the District"], was present telephonically in the person of Kirk Nelson, 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 this appeal are found at Iowa Code sections 282.18 and 290.1(1999).

Appellant filed an affidavit which seeks reversal of a September 13, 1999, decision of the Board of Directors [hereinafter, "the Board"] of the District which denied her late-filed open enrollment request for her son, Marcelious Nickelson.

The administrative law judge finds that she and the Director of the State Department of Education have jurisdiction over the parties and subject matter of the appeal before them.

I.
FINDINGS OF FACT

At the time of this appeal hearing, Marcelious Nickelson ("Mars") was a ten-year-old attending the fifth grade in the Hampton-Dumont Community School District. Prior to fifth grade, Mars had attended kindergarten through fourth grade in the Ottumwa Community School District, where he resided with his mother, Appellant Anntoinette Jolley, and his "step-father," to whom his mother was not married. Mars' biological father lives in Cedar Rapids. Mars' biological parents were never married, so a court-ordered custody arrangement was not required when they separated several years ago. Mars has lived with Ms. Jolley all of his life and visited his father in Cedar Rapids during the summer and on some holidays. In March 1999, Ms. Jolley moved away from the "stepfather" in Ottumwa to Geneva to reside with her fiancée.

Mars finished the fourth grade in Ottumwa while still residing with his "stepfather." Ms. Jolley picked up Mars from Ottumwa at the end of his fourth-grade school year and took him to Geneva. After a couple of days, Mars went to Cedar Rapids to spend much of his summer vacation with his biological father. On or about August 13, 1999, Mars rejoined his mother who was residing with her fiancée in Geneva.

Ms. Jolley testified that she and her fiancée were planning to marry on December 31, 1999. Her fiancée has two daughters who are currently open enrolled out of the Ackley-Geneva School District into the Hampton-Dumont Community School District. Since the fiancée's daughters were open enrolled to the Hampton-Dumont District, Ms. Jolley took it for granted that Mars could also attend the Hampton-Dumont District. Mars started his fifth-grade year in Hampton. On the second day of school, she received a phone call from the Hampton-Dumont elementary principal stating that she would need approval from the Ackley-Geneva Community School District's Board of Directors in order for Mars to attend in Hampton. Ms. Jolley then filed an open enrollment application on August 25, 1999. The Board denied her application on September 13, 1999, because it was filed late without good cause. The Board has a policy not to grant late-filed open enrollment applications and it had just denied a similar one the month before.

Sometime later in September, after the Board meeting, Ms. Jolley and Mars moved out of her fiancée's home in Geneva and into a room in the fiancée's brother's home in Hampton so that Mars could attend Hampton-Dumont Schools as a resident student. Ms. Jolley pays a monthly rent. Ms. Jolley testified at the hearing that she and Mars spend all school nights in Hampton at their rented room. They get up early in the morning and drive to Geneva, where Ms. Jolley helps prepare her fiancée's daughters for school and puts the girls and Mars on the bus to Hampton to attend school. Ms. Jolley then goes to work at her job in Geneva. At the end of the school day, Mars rides the bus back to Geneva with the fiancée's daughters. Ms. Jolley picks up all three children at the bus stop, takes them to the fiancée's home in Geneva, and then returns to work. After work, Ms. Jolley goes to her fiancée's residence to prepare the evening meal. She and Mars then go to their Hampton room to do homework and sleep. Mars and Ms. Jolley spend most weekends in Geneva. Ms. Jolley's mailing address is a post office box in Geneva.

Ms. Jolley testified that her goal is for her and Mars to move back to Geneva after the December 31, 1999, wedding so that all of them can live together as a family in one residence with all the children attending school in the Hampton-Dumont District. She is concerned because Mars' biological father in Cedar Rapids would now like physical custody of Mars. Ms. Jolley currently has temporary custody of Mars. A trial date is set for February 1, 2000, to determine who will have permanent physical custody of Mars. Ms. Jolley has not told her attorney about her current living arrangement and has had no advice from her attorney that her current living arrangement would jeopardize her custody of Mars. She is worried, however, that Mars' biological father might contend that Mars is in an unstable situation.

Ms. Jolley appealed the open enrollment denial. Ms. Jolley testified that the reason she didn't file the open enrollment application until August was that when she moved to Geneva, her fiancée forgot to tell her about the open enrollment application process that his daughters had been through and she did not know about the deadlines. Therefore, the evidence was undisputed that the reason she did not file the application until August was because she did not know about the open enrollment deadlines until the Hampton-Dumont District's administration called her at the end of August after Mars began his fifth-grade year there.

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 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 §282.18(16)(1999).

Although the State Board of Education has rulemaking authority under the Open Enrollment Law, the rules do not expand the types of events that constitute good cause. 281 Iowa Administrative Code 17.4. Since Ms. Jolley filed Mars' open enrollment application well after the June 30 deadline, Mars' situation does not constitute good cause for a late-filed open enrollment application as defined by the Legislature and the Departmental Rules.

The State Board has denied requests to reverse denials of open enrollment applications by parents who had not received notice of the deadlines or did not know it existed. *In re Nathan Vermeer,* 14 D.o.E. App. Dec. 83 (1997); *In re Candy Sue Crane,* 8 D.o.E. App. Dec. 198(1990). The fact that Ms. Jolley was not aware of the open enrollment deadlines does not constitute good cause for filing an application after the January 1 deadline.

In addition, we conclude that this situation does not constitute an extraordinary case that requires the Board to exercise its discretionary power under Iowa Code subsection 282.18(18)(1999). 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 18[1] power in seven 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.

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[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 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 grand-parents 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 Abrianne 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, Abrianne 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 and most recent 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 present situation, unlike those described above, does not involve extraordinary circumstances such as a recent court-ordered change in custody, an abusive situation, a divorce, a death, or a series of moves mandated by job transfers.[2] We conclude, therefore, that this situation does not constitute an extraordinary case that requires the Board to exercise its discretionary power under Iowa Code §282.18(18) (1999).

The issue of residency has been addressed several times in the open enrollment context.[3] Physical presence in the desired district is not accorded much weight if a home has been established in another district. The State Board of Education has been consistent in finding that there is no residency for tuition-free education or enrollment count when the physical presence of the student appears to be solely for school purposes, as is the case here.

According to Iowa Code section 282.1(1999), a resident student is "a child who is physically present in a district, whose residence has not been established in another district by operation of law, and who … is in the district for the purpose of making a home and not solely for school purposes." Ms. Jolley testified at the appeal hearing that the purpose of renting a room in Hampton was solely for the purpose of allowing Mars to attend the Hampton-Dumont Community School District as a resident student. Ms. Jolley's mailing address is Geneva – not Hampton. Even though she has gone to great

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[2] The State Board acknowledges Ms. Jolley's concern for the effect that her choice might have on the stability of Mars' home life. Mars' biological father is seeking custody of Mars, but custody decisions are under the jurisdiction of the district court. The State Board is in no position to know whether it is in Mars' best interest to reside with his biological mother or with his biological father. Ms. Jolley was reminded at the appeal hearing that the deadline for open enrollment for the 2000-2001 school year would be January 1, 2000.

[3] *See In re Ashley and Jared Jensen,* 17 D.o.E. App. Dec. 112(1999). Parents moved with their three children into a district which had been closed to open enrollment. After a couple of months, they returned to their home district and filed for "continuation" under the Open Enrollment provisions. The State Board found that they had not been *bona fide* residents of the district in which their children wished to continue.

lengths, including paying rent, to make it appear that Hampton is her residence, the requirements of residency for a student are stated clearly in the law and those requirements have not been met by Ms. Jolley and Mars. Over the years, the Department of Education has been presented with a variety of methods used by parents to attempt to establish residency for their children in another school district that they consider more desirable.

In 1984, the Department of Education issued a Declaratory Ruling which answered a series of specific questions on the issue of residence for school purposes. 1 D.P.I. App. Dec. 80 – Declaratory Rul. #33. As that ruling noted, two sections of the Iowa statutes create the structure surrounding the issue of residence for school purposes. Iowa Code section 282.6 provides in relevant part that "every school shall be free of tuition to all actual residents between the ages of five and twenty-one years" and section 282.1 provides in relevant part that "nonresident children shall be charged the maximum tuition rate as determined in section 282.24." The obvious result of these two sections is that children who are "actual residents" must be provided a tuition-free education, and those children who are not "actual residents" must be charged tuition. Physical presence in the desired district is not accorded much weight if a home has been established in another district. The State Board of Education has been consistent in finding that there is no residency for tuition-free education when the physical presence of the student appears to be solely for school purposes, as is the case here.

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 Ackley-Geneva Community School District made on September 13, 1999, denying Appellant's late-filed open enrollment application for Marcelious Nickelson for the 1999-2000 school year, is hereby recommended for affirmance. There are no costs under Iowa Code chapter 290 to be assigned.

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

It is so ordered.

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DATE TED STILWILL, DIRECTOR

DEPARTMENT OF EDUCATION