

**Iowa State Department
of Education**
(Cite as 18 D.o.E. App. Dec. 102)

<i>In re Megan and Tony Feldmann</i>	:	
Scott and Deb Feldmann, Appellants,	:	
v.	:	DECISION
Grand Community School District,	:	
Appellee.	:	[Adm. Doc. #4119]

The above-captioned matter was heard on September 23, 1999, before Ann Marie Brick, J.D., legal consultant and designated administrative law judge. The Appellants, Scott and Deb Feldmann, were "present" telephonically and were represented by Attorney Michael F. Mahoney of the Jordan, Mahoney and Jordan Law Firm 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 Appellants seek reversal of two decisions of the Board of Directors [hereinafter "the Board"] of the District made on March 17, 1999, and August 18, 1999, that denied open enrollment for their children.

**I.
Findings of Fact**

Scott and Deb Feldmann are residents of the Grand Community School District. They have three school-aged children: Megan, grade 8; Tony, grade 5; and Amy, kindergarten. Megan and Tony are the subjects of this appeal.

The District is in the second year of a one-way, whole-grade sharing agreement with the Ogden Community School District. The agreement will expire at the end of the 1999-2000 school year. Under the agreement, each district educates its resident elementary (grades K-6) students. The District's secondary

(grades 7-12) students attend the Ogden District. Because of the agreement, Megan attended Ogden for the 1998-99 school year and would continue there for 1999-2000, the second and final year of the agreement. Tony attended Grand for the 1998-1999 school year and would continue there for 1999-2000. In June 1998 the District informed its patrons by newsletter that the Board, as part of its long-range planning, was exploring future sharing possibilities with Ogden and with the Southeast Webster Community School Districts.

In February 1999, the Feldmanns filed open enrollment applications for Megan, Tony, and Amy to attend Ogden beginning in the 1999-2000 school year. The applications were received by the District on February 22, 1999. At its March 17, 1999, meeting, the Board denied the applications for Megan and Tony for being untimely filed. It approved Amy's application because she would be entering kindergarten and the deadline for such students is June 30. The Feldmanns had also filed a request that the Board allow an Ogden bus to enter the District to transport the children to Ogden. The Board did not act on this request. On March 31, 1999, the Feldmanns timely-filed an appeal of the Board's decision with the State Board of Education, asserting that the Board had established a precedent of approving untimely-filed open enrollment applications. They supplied the names of seven District students who had been approved for open enrollment to Ogden between 1993 and 1998 even though their applications were untimely filed. (Appellants' Exhibit.)

In May 1999, the District informed its patrons by newsletter that the Board had selected Southeast Webster as its new sharing partner beginning with the 2000-2001 school year. The two boards then held a series of meetings to gather public input and to finalize the sharing agreement. In July 1999, the two districts sent a joint memorandum to their patrons. It included a copy of the proposed sharing agreement and information on a public hearing about the agreement. It also included the following:

It is the hope of both districts that a sharing agreement be signed in August. This will allow those Grand students who wish to open enroll into the Southeast Webster School District for the fall of 1999 the opportunity to do so before school starts.

(Appellee's Exhibit, rec'd. September 29, 1999.)

On August 10, 1999, the District received the second open enrollment applications for Megan and Tony to attend Ogden for the 1999-2000 school year.¹ In attachments to the applications, the Feldmanns cited future eligibility for extracurricular activities as the reason for the application for Megan and ease of transition to middle school as the reason for the application for Tony.

The Board met on August 18, 1999, and denied the applications for Megan and Tony because they did not meet the "good cause" definition in the Open Enrollment Law. At the same meeting the Board denied the application of one additional student to attend Ogden for the 1999-2000 school year. It also approved the open enrollment applications of nine students to attend Southeast Webster for the 1999-2000 school year.

On August 20, 1999, the Board signed a whole-grade sharing agreement with Southeast Webster, beginning on July 1, 2000, and ending June 30, 2006.

Linda Hartman, superintendent of the Grand Community School District, testified as to the Board's policies and their application to Megan and Tony.

The Board has an open enrollment policy which states in pertinent part:

Parents requesting open enrollment out of the school district for their student shall notify the school district no later than January 1 in the school year preceding the first year desired for open enrollment.

Parents of children who will begin kindergarten in the school district are exempt from the open enrollment January 1 deadline. Parents of children who will begin kindergarten shall file in the same manner set forth above by June 30 prior to the beginning of the child's kindergarten year. Parents who have good cause as defined by law for failing to meet the January 1 deadline may make an open enrollment request in the same manner set forth above.

(Grand Comm. Sch. Dist. Code No. 501.4, approved September 18, 1996; revised December 16, 1997. Appellee's Exhibit.)

¹ As of August 10, 1999, a decision on the Feldmanns' appeal of the Board's March 17, 1999, denial of their original applications had not been rendered by the State Board of Education.

Superintendent Hartman testified that in the past the Board had approved late-filed open enrollment applications, but it had decided to discontinue that practice and enforce the deadlines in the law. She said this policy change occurred at the July 1997 Board meeting or shortly thereafter.

Superintendent Hartman also testified about the Board's actions on open enrollment applications at its August 1999 Board meeting. She said that some parents of secondary level (grades 7-12) students had asked whether their children could begin attending Southeast Webster for the 1999-2000 school year rather than waiting until the new sharing agreement began in 2000-2001. She testified that the Board agreed this would be beneficial for the students, and their open enrollment applications were approved for that reason. The Board denied the Feldmanns' applications because they did not meet the statutory definition of "good cause" for late applications. Tony Feldmann's application was denied for the additional reason that the Board considers the District's elementary program appropriate and has not approved open enrollment for elementary students to any district.

Superintendent Hartman also testified that she had been advised by a consultant at the Department of Education concerning specific issues related to open enrollment and whole-grade sharing. This advice included the opinion that the District could approve 1999-2000 open enrollment applications for students in grades 7-12 to Southeast Webster only.²

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 6.17(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).

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In this appeal, the State Board is asked to determine

² This advice was incorrect, but does not exempt the Board from acting within the law.

whether the Board's decisions, on two separate occasions, to deny open enrollment requests for Megan and Tony Feldmann were reasonable exercises of its authority.

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).

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 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) (1999).

The Feldmanns' first open enrollment requests for Megan and Tony were received by the District on February 22, 1999, after the January 1 deadline. They did not claim "good cause," so the June 30 deadline was not applicable. As a result the applications were untimely filed. The Appellants, however, maintain that the applications should have been approved because the Board had set a precedent of approving late-filed applications. The evidence supports this position. The Appellants' evidence that the Board approved seven late-filed applications between 1993 and 1998 was not refuted. Indeed, Superintendent Hartman testified that the Board had in the past approved late-filed applications.

The Board has a policy requiring adherence to the filing deadlines in the Open Enrollment Law. We have, however, no evidence of the reasons why the Board made the seven exceptions to its policy. 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 Melissa J. Van Bommel*, 14 D.o.E. App. Dec. 281(1997); *In re Shawn and Derrick Swenson*, 12 D.o.E. App. Dec. 150 (1995).

Superintendent Hartman testified that the Board decided, sometime about July 1997, 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. *In re Jason and Joshua Toenges*, 15 D.o.E. App. Dec. 22 (1997). There is no evidence of such public notice of policy change in this case.

Because of the Board's past practice of approving late-filed open enrollment applications and the absence of public notice that it would no longer do so, the Appellants were justified in expecting that their applications would also be approved. The Board's denial on March 17, 1999, therefore, fails the test of reasonableness.

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The Feldmanns' second open enrollment applications for Megan and Tony were received by the District on August 10, 1999, well

after the January 1 deadline for regular applications and the June 30 deadline for "good cause" applications. They were denied at the August 18, 1999, Board meeting because they did not meet the "good cause" definition.

At the same meeting, the Board approved the open enrollment applications of nine students to attend Southeast Webster for the 1999-2000 school year. It is undisputed by the parties that all nine of these applications were also untimely filed and did not meet the good cause definition.

There is no basis in the law or in the Board's policy for the Board's distinction between open enrollment to Ogden and open enrollment to Southeast Webster. The Board's denial of the Feldmanns' open enrollment applications was arbitrary (*In re Jason and Joshua Toenges, supra*) and, therefore, unreasonable.

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

**III.
DECISION**

For the foregoing reasons, the decisions of the Board of Directors of the Grand Community School District, made on March 17, 1999, and August 18, 1999, that denied open enrollment for Megan and Tony Feldmann, are hereby recommended for reversal. There are no costs of this appeal to be assigned.

DATE

It is so ordered.

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

DATE

CORINE HADLEY, PRESIDENT
STATE BOARD OF EDUCATION