

**IOWA STATE BOARD  
OF EDUCATION  
(Cite as 18 D.o.E. App. Dec. 95)**

---

<i>In re Brian Jeffers</i>	:	
Marlin Jeffers & Melody Hamil, Appellants,	:	
v.	:	DECISION
Sioux City Community School District, Appellee.	:	
		[Admin. Doc. #4179]

---

The above-captioned matter was heard telephonically on December 15, 1999, before Susan E. Anderson, J.D., designated administrative law judge. Appellants, Marlin Jeffers and Melody Hamil, were present and were unrepresented by counsel. Appellee, Sioux City Community School District [hereinafter, "the District"], was present in the person of Richard Bathurst, assistant to the superintendent. The District was represented by Dawn Mastilar of Bernstein, Moore, Bernstein, Heffernan and Moeller of Sioux City, Iowa.

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).

Appellants filed an affidavit which seeks reversal of a September 28, 1999, decision of the Board of Directors [hereinafter, "the Board"] of the District which denied their late-filed open enrollment request for their son, Brian Jeffers.

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.

**I.  
FINDINGS OF FACT**

Appellants Marlin Jeffers and Melody Hamil are the divorced parents of Brian Jeffers. Brian is currently a third-grader attending the Woodbury Central Community School District. During the time that his parents were married, Brian and his family lived in the Sioux City Community School District. On December 12, 1995, Brian's open enrollment application to attend Woodbury Central Community School District was

approved by the Sioux City Board for a period of 13 years. Woodbury Central offered an all-day kindergarten program that was not offered through the Sioux City Community School District. Brian attended Woodbury Central School District as an open-enrolled student during the following academic years: 1996-1997, his entire kindergarten year; 1997-1998, his entire first-grade year; and the fall of 1998-1999, the first four months of his second-grade year.

In November 1998, Brian's parents separated and began maintaining separate residences within the Sioux City District. Brian and his two siblings, who were not yet of school age, lived with their mother under the separation agreement. The parents have joint custody of Brian and his twin brothers with physical custody to Ms. Hamil. The parents have managed to maintain a good relationship through the separation and divorce, as well as after the divorce, so the children see their father frequently.

Marlin Jeffers has a position in the Woodbury Central Community School District. After the separation, he would pick up Brian every morning from his mother's apartment and drive him to school at Woodbury Central. At about this same time, Brian started seeing a therapist on an intermittent basis because he was experiencing problems with depression. Brian was then seven-and-a-half years old. Brian's parents were concerned about making the adjustment to two separate residences as smooth as possible for Brian. They felt that Brian would be unnecessarily confused by his father's arrival every morning at the mother's residence. They made the decision to cancel the open enrollment agreement with Woodbury Central and enrolled Brian in the Sioux City Community School District for the remainder of his second-grade year.

Brian's experience of changing to a new school in the middle of his second-grade year proved to worsen both his depression and his adjustment to his parents' separation and divorce, which was final in April 1999. In August of 1999, Brian's mother was forced, due to financial considerations as a result of the divorce, to go from being a full-time, stay-at-home mother to taking a full-time job as a middle-school music teacher in Vermilion, South Dakota. She took the job but maintains her residence with Brian and his twin brothers in Sioux City.

In the meantime, Brian's depression was worsening. He wanted to return to his school at Woodbury Central for his third-grade year and ride with his father to school every day. The Woodbury Central third-grade classroom has 19 children and the Sioux City third-grade classroom would have had 30 students. The difference in the size of the classes would allow Brian the opportunity to deal with his depression in a smaller environment in a building that adjoined his father's place of employment. Brian's parents, therefore, filed another open enrollment application on September 13, 1999, for Brian to switch back to the Woodbury Central Community School District to continue his

education. Brian's twin brothers were already open enrolled to Woodbury Central so they could attend the transitional kindergarten program offered at Woodbury Central, but not offered at Sioux City. Brian began his third-grade year at Woodbury Central.

The Sioux City Board denied the Appellants' late-filed open enrollment request for Brian at its meeting on September 28, 1999, because it was filed late without good cause. Brian's parents appealed the Board's denial of their open enrollment application.

At the appeal hearing, a letter from Brian's doctor, David Berman Walker, M.D., who oversees both Brian's treatment and Brian's therapy, was received as part of the record. The letter stated that Brian is taking medication for his depression, which "has been manifested by sadness, acting out and at times, defiant behavior." Dr. David Berman Walker's opinion, which was read into the record, is in pertinent part, as follows:

I would like to note that I would support his [Brian's] continuing to attend Woodbury Central because I understand that would keep him in a stable, familiar and consistent environment. I think that such a stable environment is important for him. He has been slowly improving while attending Woodbury Central and if this is a possibility, I think that this would be the best educational support for him.

## **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). By the time Brian's parents realized the extent of his depression problems brought on by his poor adjustment to their divorce and his switch to a different school in the middle of second grade, they had missed the June 30 good cause deadline for the 1999-2000 school year. Under the current Administrative Rules governing open enrollment, there is no provision that addresses a situation like Brian's. 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 18<sup>1</sup> 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

---

<sup>1</sup> 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.

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 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 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, like those described above, presents an appropriate occasion for the use of the State Board's discretionary power. It was undisputed at the appeal hearing that Brian's depression is 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. Brian's doctor concluded that his depression has been improving since he changed back to Woodbury Central at the beginning of his third-grade year. We conclude that it is in Brian's best interest to continue in the Woodbury Central Community School District.

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 Appellants' application for open enrollment for Brian Jeffers to Woodbury Central School District.<sup>2</sup>

---

<sup>2</sup> We note that since Brian's open enrollment to Woodbury Central School District was previously approved in 1995 for 13 years, which would represent his entire school career, there would be no actual harm to the District if Brian returns to the Woodbury Central District after one semester in the Sioux City District.

At the appeal hearing, the District's counsel requested that should the State Board of Education exercise its subsection 282.18(18) power in this case "that any open enrollment fees that would be charged to the District be waived." Pursuant to the Department's rules in 281 Iowa Administrative Code 17.10, entitled "Method of Finance," funding for Brian's education should be prorated between the District and the Woodbury Central Community School District based on the number of quarters of school enrollment.

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 Sioux City Community School District made on September 28, 1999, denying Appellants' late-filed open enrollment application for Brian Jeffers for the 1999-2000 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