

**IOWA STATE BOARD
OF EDUCATION
(Cite as 18 D.o.E. App. Dec. 80)**

In re James Kisslring	:	
In re Theon Rettig, <i>et al.</i>	:	
Georgia White Kisslring, and	:	
Ronni & Shawn Rettig, <i>et al.</i> ,	:	
Appellants,		
v.	:	PROPOSED DECISION
Belmond-Klemme Community	:	
School District,		
Appellee.	:	

[Admin. Doc. #4156]

The above-captioned matters were heard on November 23, 1999, before a hearing panel comprised of Jim Tyson, consultant, Bureau of Administration and School Improvement Services; John O’Connell, consultant, Bureau of Instructional Services; and Ann Marie Brick, J.D., legal consultant and designated administrative law judge, presiding. These matters were consolidated for hearing because the parties’ appeals presented common issues of law and of fact. Appellants were present and represented by James Stanton of the Stanton and Sorensen Law Firm, of Clear Lake, Iowa. Appellee, Belmond-Klemme Community School District [hereinafter, “the District”], was represented by Gary L. Berkland of the Houser & Berkland Law Firm, of Belmond, 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 section 290.1(1999).

Appellants filed an affidavit which seeks reversal of a July 13, 1999, decision of the Board of Directors [hereinafter, “the Board”] of the District which denied Appellants’ open enrollment applications for the 1999-2000 school year on the grounds that they were filed late without “good cause”.

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

The Belmond and Klemme Districts began whole grade sharing in 1990. The two districts merged in 1994 through consolidation. The Belmond-Klemme District then became one district with four attendance centers: three are located in Belmond; only one, the middle school, is located in Klemme.

This appeal involves the denial of applications filed on behalf of several Belmond-Klemme students who want to open enroll to attend Garner-Hayfield Community School District, beginning in the fall of the 1999-2000 school year. All of the applications were filed after the January 1, 1999, deadline for open enrollment, but they were filed prior to the June 30, 1999, deadline for students who have “statutory good cause” for late-filing. Appellants’ position is that they have “good cause” for filing after the January 1 deadline.

Appellant Kisslring’s application was filed after the June 1, 1999, public meeting and forum to discuss closure of the middle school located in Klemme. All of the remaining applications were filed by Appellants following the June 16, 1999 Board meeting during which the Board voted to close the middle school attendance center in Klemme. The actual closing of the Klemme building was delayed until the 2000-2001 school year to allow sufficient time for planning. (Exh. I.) Everything was to remain the same for the 1999-2000 school year. The only change was in the guidance program which occurred after the resignation of the counselor. After she resigned for the 1999-2000 school year, her job was split between two current employees who have the appropriate grade-level certification. With the exception of the Schmidts who reside southwest of Klemme, all other Appellants are residents of Klemme, Iowa.

Departmental rules implementing the Open Enrollment statute enumerate 15 circumstances that constitute “good cause” relating to a change in the status of the pupils’ resident district. 281 Iowa Administrative Code 17.4(2). Not one of the 15 exceptions mentions the closing of an attendance center as “good cause”. In fact, the rules specifically state that “good cause” under this section shall not include “[a]ctions of a board of education in the designation of attendance centers within a school corporation and in the assignment of pupils to such centers as provided by Iowa Code section 279.11.” 281 IAC 17.4(3)(a).

Appellants’ position is that they are not filing for open enrollment because of the closing of the Klemme middle school. Each Appellant listed an explanation for the open enrollment request. These are summarized below:

Student's Name	Grade	Date of Application	"Good Cause" Reason
Theon Rettig	1	6-21-99	No full-time elementary counselor & financial difficulties of the district
Amber Schmidt	6	6-21-99	Better environment & guidance counselor
Rhonda Schmidt	3	6-21-99	Better environment & guidance counselor
Nicholas Schmidt	5	6-21-99	Better environment & guidance counselor
Brett Carolus	5	6-12-99	Restructuring of resident district. We also have concerns about safety in the Parker Building we weren't aware of before; overcrowding of classes and climate control.
Trevor Carolus	3	6-12-99	Restructuring of resident district. We also have concerns about safety in the Parker Building we weren't aware of before; overcrowding of classes and climate control.
Adam Schmidt	8	6-14-99	Adam's future is in agriculture. Garner-Hayfield offers a strong vocational program in agriculture, industrial arts and FFA.
Evee Jo Christeson	5	6-25-99	Counselor concerns; unstable district finances; counselor programs; safety issues of building, insufficient classroom space.
Todd Christeson	7	6-25-99	Educational advantages; scholarship fund; unstable district finances; unfit building to accommodate junior high youth.

Joshua Black	5	6-22-99	Financial difficulty; not replacing guidance counselor; decline in education.
Lorna Black	2	6-22-99	Financial difficulty; not replacing guidance counselor; decline in education.
Cole Hauptmann	1	6-22-99	District financial difficulties; better education opportunities; better facilities and safety.
Bradley Hauptmann	4	6-22-99	District financial difficulties; better education opportunities; better facilities and safety.
Brittney Pannhoff	2	6-22-99	Better environment.
Michael Pannhoff	8	6-22-99	Better environment.
Telsie Pannhoff	4	6-22-99	Better environment.
Casey Smith	5	6-21-99	Better education opportunities; safety.
Samantha Smith	4	6-21-99	Better education opportunities; safety.
Danielle Hanson	9	6-22-99	Danielle has a severe hearing loss. The school as far as junior high and before has done much in helping her with her problem areas. I had to push and push just to get her extra help. That shouldn't be. She also has asked us to send her to Garner.
Matthew Hanson	2	6-22-99	District financial difficulties; better educational opportunities; facilities in Garner are safer; no guidance counselor on staff at the school full time.
Megan Hanson	6	6-22-99	No guidance counselor on staff at the school full time. Two other siblings are open enrolling and I want them together.

			She wants to go to Garner. Better education opportunities.
Ethan Nannenga	2	6-16-99	After reading the architect's evaluation of the Parker School, we feel it is an unsafe environment for our child.
*Nicholas Bruggemann	5	6-16-99	We feel our children are in an unsafe building (Parker) and in a financial unstable district. Also, we feel we are no longer wanted in your district due to the feelings between the communities. Better quality of education.
*Norman Bruggemann	2	6-16-99	We feel our children are in an unsafe building (Parker) and in a financial unstable district. Also, we feel we are no longer wanted in your district due to the feelings between the communities. Better quality of education.
James Kisslring	8	6-1-99	Better special education program.
Marguerite Kisslring	12	6-21-99	Academic and environmental reasons.
(Appellants' open enrollment applications.)			

During the course of the seven-hour hearing, the majority of the testimony and evidence presented by the Appellants concerned issues regarding the quality of the District's curriculum, the safety of its facilities, and the stability of its finances. However, we find that that evidence is not relevant to the issue of "good cause," so it will not be recounted here.¹

II. CONCLUSIONS OF LAW

Appellants do not question the "closing" of the Klemme attendance center. In fact, they were consistent in maintaining that the closing of the attendance center had nothing to do with their decisions to open enroll their children to the Garner-Hayfield Community

¹ That evidence may have been relevant to the issue of whether or not it was "reasonable" for the District to close the Klemme attendance center, but that decision has not been questioned on appeal and, therefore, it will not be addressed.

School District. Appellants were probably aware that Iowa law gives local board of directors' specific powers and duties regarding attendance centers.

The board of directors of each public school district and the authorities in charge of each nonpublic school shall establish and maintain attendance centers based upon the needs of the school-aged pupils enrolled in the school district or nonpublic school.

Iowa Code section 280.3(1999); and

The board of directors shall determine the number of schools to be taught, divide the corporation into such wards or other divisions for school purposes as may be proper, determine the particular school which each child shall attend, and designate the period each school shall be held beyond the time required by law.

Iowa Code section 279.11(1999).

Even the Open Enrollment Law does not limit this right of the board of directors. The Iowa Administrative Code clarifies that open enrollment is “to a district ... not to an attendance center.” 281 Iowa Administrative Code 17.6(4). And, “the receiving district board has the same authority it has in regard to its resident pupils ... ‘to determine the particular school which each child shall attend.’” *Id.*

In the present appeal, then, the closing of the Klemme building is not at issue. In addition, there is no dispute in the record that the open enrollment requests that the Board denied at its July 13, 1999, meeting, were untimely filed. The question is whether the late-filed applications can be granted under the “good cause” exception to the timelines.

The precedent established by the State Board of Education in appeals decided under the Open Enrollment Law provides no authority for overturning the District Board's denial of these applications. The provisions of 281 Iowa Administrative Code 17.4(3) specifically state that designation of attendance centers within a district and assignment of students to those attendance centers does not constitute “good cause”. Similarly, Iowa Code section 282.18(16)(1999) implies that the closure of a public school is not good cause because it specifically limits good cause to “permanent closure of a *nonpublic* school”. *Id.* (Emphasis added.) None of the reasons listed by Appellants as “good cause” for their late-filed applications has ever been held to constitute good cause by the State Board of Education.

Furthermore, a decision to grant the open enrollment applications in this case would be inconsistent with the exercise of the State Board's extraordinary power bestowed by Iowa Code section 282.18(18)(1999), upon which Appellants so strongly rely.

This is principally due to the fact that the conditions listed by Appellants as the excuse for the late filing would have existed prior to January 1, 1999, *IF* they existed at all. We are not agreeing with Appellants that there are safety concerns, unstable finances or curriculum deficiencies in the Belmond-Klemme District. Assuming, for the sake of argument, that these conditions existed, they did not suddenly occur after the January 1 deadline for open enrollment. The evidence is undisputed that nothing was going to change in the 1999-2000 school year as a result of the Board's June 16, 1999 decision to close the Klemme attendance center. In fact, the Board took great pains to delay the implementation of its decision for an entire school year in order to allow a sufficient time to implement the change. All of the Appellants, with the exception of the Bruggemanns and the Kisslrings² have been granted open enrollment out for the 2000-2001 school year. The evidence showed that nothing was different after January 1, 1999, than it was before January 1, 1999. With the exception of the resignation of the guidance counselor, the District would operate just as it had the year before in the 1999-2000 school year.

The Appellants have failed to demonstrate that any condition constituting "good cause" existed to excuse their late-filed applications. It is hard to believe that only Klemme parents would be concerned about the safety issues, if any, at the Parker Building. It is unlikely that only Klemme parents would be concerned about the District's "deficiencies in curriculum" or "unstable financial condition". What is more likely and what has been found to be more credible by the hearing panel, is that the closing of their attendance center upset these Klemme parents. This conclusion is reinforced by the fact that all Appellants live in Klemme; all Appellants filed for open enrollment at approximately the same time; and all Appellants filed after the public hearing announcing the Board's future decision to close the Klemme attendance center.

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 IAC 17.4. Although we sympathize with the frustrations of parents and community members who struggle to prevent the loss of the only attendance center in their town, it is a situation that communities are being forced to address more frequently as student

² It is believed that the Kisslrings have moved out of state. They were not present at the appeal hearing to testify and their appeal will be dismissed. The Bruggemanns present a more complex problem. Norman Bruggemann testified that he and his family currently reside in Garner, and lives in a house he has rented there. His boys attend 5th and 2nd grades in the Garner-Hayfield District tuition-free as residents. The Bruggemanns cannot file for open enrollment as residents of the Belmond-Klemme District and attend tuition-free in Garner-Hayfield as residents. Therefore, the Bruggemanns' appeal will also be dismissed.

populations in Iowa decline. Although it may be very difficult for some district patrons to accept the inevitable loss of the attendance center in their town, it will be more difficult for them to maintain the best educational interests of their students if they cannot find a way to heal the loss and move forward.

Any motions or objections not previously ruled on are hereby denied or overruled.

III. DECISION

For the foregoing reasons, the decision of the Board of Directors of the Belmond-Klemme Community School District made on July 13, 1999, denying Appellants' late-filed open enrollment applications for their students to attend Garner-Hayfield in the 1999-2000 school year, is hereby recommended for affirmance. 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