

**IOWA STATE BOARD
OF EDUCATION**
(Cite as 18 D.o.E. App. Dec. 43)

***In re Traci, Trudi, & Kayla
Francis***

Alan & Debra Francis,
Appellants,

v.

Pomeroy-Palmer Community
School District,
Appellee.

:

:

:

:

:

DECISION

[Admin. Doc. #4147]

The above-captioned matter was heard telephonically on November 2, 1999, and November 16, 1999, before Susan E. Anderson, J.D., designated administrative law judge. Appellant, Debra Francis, was present telephonically and was unrepresented by counsel. Appellee, Pomeroy-Palmer Community School District [hereinafter, "the District"], was present telephonically in the persons of Ted Lyons, Superintendent; and Deann Buddin, Board Secretary. The District was also unrepresented by counsel.

An evidentiary hearing was held in accordance with 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). The administrative law judge finds that she and the Director of the Department of Education have jurisdiction over the parties and subject matter of the appeal before them.

Appellant seeks reversal of a decision of the Board of Directors [hereinafter, "the Board"] of the District made on May 17, 1999, denying Appellant's late-filed requests for open enrollment for her daughters, Traci Ann Francis, Trudi Marie Francis, and Kayla Dawn Francis.

**I.
FINDINGS OF FACT**

At the time of this appeal, the Francis girls were attending elementary school in the District for the 1999-2000 school year. Traci and Trudi, twins, are in the fourth grade and Kayla is in the second grade. The Francis family's residence is in the District, although it is close to the line dividing the District and the Pocahontas School District. The Francis children have always attended school in the Pomeroy-Palmer Community School District. In the spring of 1999, however, two situations occurred which prompted Ms. Francis to seek open enrollment of her daughters into the Pocahontas Community School District.

In April of 1999, Ms. Francis accepted a position as school nurse in the Pocahontas District. In the spring of 1999, the Pomeroy-Palmer District decided, due to financial concerns, to close its attendance center in Palmer. The effect of this decision to close the Palmer attendance center is that all of the District's students will attend grades kindergarten through twelfth in one building located in Pomeroy. Ms. Francis is concerned that the housing of all the students in the Pomeroy building will result in overcrowding and scheduling problems. The Pocahontas District, by contrast, offers a separate elementary building. The Pocahontas District could accommodate the twins in separate classrooms, which they would prefer. The twins have successfully been attending school in the same classroom since they started kindergarten in the District. The Francis family also includes a son who is attending the fifth grade in the District. He does not want to open enroll to Pocahontas.

Ms. Francis testified that she was told in the spring of 1999 by District administration that if the Palmer Building were to close, the District "would probably have to allow parents the option of open enrolling their children out for 30 days after such a decision." Ms. Francis filed open enrollment applications for her daughters on May 10, 1999. The Board met on May 17, 1999, and denied the open enrollment applications for Traci, Trudi, and Kayla because they were filed after the January 1 deadline.

Ms. Francis testified that she expected the Board to approve the open enrollment requests because she felt that there had been an unwritten Board policy to allow late-filed open enrollment requests. The administrative law judge continued the hearing to a second date in order to give the District and Ms. Francis a chance to exchange lists of students who had been approved or denied late-filed open enrollment requests by the Board in the recent past.

The evidence at the continued hearing showed that the Board had approved open enrollment requests filed after the deadline, but only for reasons it felt qualified as good cause under the Open Enrollment Law. The evidence showed that on one occasion on July 30, 1998, the Board had approved a late-filed application for open enrollment for two children whose mother had just taken a position with the Pocahontas Community School District. The family had moved into the District from another city. Ms. Francis argued that the Board's unwritten policy on dealing with late-filed application was applied inconsistently in the past, particularly in the July 1998 incidence.

The evidence also showed that the Board did not have a written policy on how to handle late-filed open enrollment requests until very recently. The evidence showed that the District read a policy for the first time on this matter at the

Board the same date that it denied Ms. Francis' open enrollment requests.

II. CONCLUSIONS OF LAW

Parents must file open enrollment requests by a deadline of January 1. Iowa Code §282.18(2)(1999). However, 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 who have "good cause" for missing the January 1 filing deadline. Iowa Code §§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 good cause exception relates to two types of situations: those involving a change in the student's residence, and those involving a change in the student's school district. Iowa Code §282.18(16)(1999); 281 IAC 17.4. The statutory definition of good cause addresses those two types of situations that must occur after the January 1 deadline as follows:

For purposes of this section, "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).

We conclude that the Francis family's situation does not constitute good cause for a late-filed open enrollment application as defined by the Legislature and the Departmental Rules. The Francis family's situation involves neither a change in family residence nor a change in the status of the District. The decision to close the Palmer attendance center does not constitute a change in the status of the children's resident district.

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. The State Board has chosen to review potentially "similar sets of circumstances" on a case-by-case basis through the contested case appeal process. *In re Ellen and Megan Van de Mark*, 8 D.o.E. App. Dec. 405, 408.

There have been many appeals brought to the Iowa Department of Education regarding the definition of good cause following the enactment of the Open Enrollment Law. The State Board has refused to reverse a late application in the following situations: when the parent was unaware of the filing deadline, *In re Candy Sue Crane*, 8 D.o.E. App. Dec. 198 (1990); when the parent missed the deadline because the application was mailed to the wrong place, *In re Casee Burgason*, 7 D.o.E. App. Dec. 367(1990); when a bright young man's probation officer recommended a different school that might provide a greater challenge for him, *In re Shawn and Desiree Adams*, 9 D.o.E. App. Dec. 157(1992); when a parent became dissatisfied with a child's teachers, *In re Anthony Schultz*, 9 D.o.E. App. Dec. 381(1992); when the school was perceived as having a "bad atmosphere", *In re Ben Tiller*, 10 D.o.E. App. Dec. 18(1993); when a building was closed and the elementary and middle school grades were realigned, *In re Peter and Mike Caspers, et al.*, 8 D.o.E. App. Dec. 115 (1990); when a child experienced difficulty with peers and was recommended for a special education evaluation, *In re Terry and Tony Gilkinson*, 10 D.o.E. App. Dec. 205 (1993); or even when difficulties stemmed from the fact that a student's father, a school board member, voted in an unpopular way on an issue, *In re Cameron Kroemer*, 9 D.o.E. App. Dec. 302 (1992). Good cause was not met when a parent wanted a younger child to attend in the same district as an older sibling who attended out of the district under a sharing agreement, *In re Kandi Becker*, 10 D.o.E. App. Dec. 285 (1993). The Department has also denied a request to reverse a denial of

open enrollment by a parent who had not received notice of the deadline and did not know it existed. *In re Nathan Vermeer*, 14 D.o.E. App. Dec. 83 (1997).

The Department has declined to reverse a late application after a building had been closed and the elementary and middle grades were realigned. *In re Peter and Michael Caspers, et al.*, 8 D.o.E. App. Dec. 115(1990). Similarly, the fact that the District closed its attendance center in Palmer and moved all of the students into its attendance center in Pomeroy does not constitute good cause for filing a request for open enrollment 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 §282.18(18) (1999). The District's testimony showed that there were not significant problems caused by its decision to move all of the District students into one building. Although Ms. Francis expressed a preference that her twins, Trudi and Traci, have separate classrooms, the fact remains that they have been in the same classroom since they began elementary school and they appear to be doing fine in that situation. Therefore, the Francis family's situation does not constitute an extraordinary case that cries out for State Board intervention.¹

We conclude that the evidence showed that the District had applied its unwritten policy on handling late-filed open enrollment requests even-handedly. The incident in July 1998 involved facts that were significantly different from the ones in this appeal in that the family involved had changed their residence in August 1998. The Francis family has not changed their residence at any time relevant to this appeal.

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

III. DECISION

For the reasons stated above, the decision of the Board of Directors of the Pomeroy-Palmer Community School District made on May 17, 1999, denying Appellant's open enrollment applications for her daughters, is hereby recommended for affirmance. There are no costs of this appeal to be assigned under Iowa Code §290.4.

¹ Mrs. Francis is reminded that the deadline for filing open enrollment applications for the 2000-2001 school year is January 1, 2000.

DATE

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

It is so ordered.

DATE

TED STILWILL, DIRECTOR
IOWA DEPARTMENT OF EDUCATION