

**IOWA STATE BOARD
OF EDUCATION**
(Cite as 18 D.o.E. App. Dec. 21)

In re Emily Reinen :
Bethanne Reinen, :
Appellant, :
v. : DECISION
Davenport Community :
School District, :
Appellee. : [Admin. Doc. # 4168]

The above-captioned matter was heard telephonically on November 10, 1999, before Susan E. Anderson, J.D., designated administrative law judge. Appellant Bethanne Reinen was present telephonically and was unrepresented by counsel. Appellee, Davenport Community School District [hereinafter, "the District"], was also present telephonically in the persons of James Blanche, Superintendent; Linda Smith, Board Secretary; Denise Hollonbeck, Board President; Bill Theissen, Director for Administrative Services; and Marcene Johnson, Administrative Assistant to the Director for Administrative Services. 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 August 9, 1999, denying Appellant's late-filed request for open enrollment for her daughter, Emily Reinen.

**I.
FINDINGS OF FACT**

At the time of this appeal, Emily Reinen was attending the sixth grade in the Bettendorf Community School District. Prior to the sixth grade, Emily had attended private school. Teachers at the private school told Ms. Reinen that they recommended a public school for Emily's sixth grade and beyond to better accommodate Emily's academic needs. Although the private school recommended that Emily attend a sixth grade in a public school,

the private school at no time suggested that Emily wouldn't be welcome to continue attending the private school for as long as she wanted.

The Reinen family resides in the Davenport School District. Ms. Reinen did not want Emily to attend the Davenport Community School District at Sudlow Middle School, her assigned attendance center in the District, because of some problems that Emily's cousins had while they were enrolled there.¹ Ms. Reinen, therefore, visited the Bettendorf Schools and decided she would like Emily to attend sixth grade in Bettendorf.

Ms. Reinen was not familiar with the open enrollment deadlines and received advice from a private attorney and from a Davenport School Board member that the open enrollment deadlines did not apply to Emily. Ms. Reinen did not file her open enrollment application until July 23, 1999. The Board denied the application on August 9, 1999, because it was filed late without good cause. Ms. Reinen decided to go ahead and have Emily start in the Bettendorf Community School District nevertheless.

Ms. Reinen appealed the decision of the Board to deny her open enrollment application out of the Davenport Community School District into the Bettendorf Community School District.

Davenport Community School District Superintendent James Blanche testified that if Ms. Reinen had talked with the District's administration, they would have discussed five other attendance center options for Emily besides the Sudlow Middle School. Ms. Reinen responded by saying that she didn't want to discuss those five other options at this point because she still wants Emily to attend Bettendorf Community School District.

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).

¹ Ms. Reinen testified that two of Emily's cousins had been "beaten up" while attending Sudlow Middle School and had subsequently dropped out of school.

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 Emily's situation does not constitute good cause for a late-filed open enrollment application as defined by the Legislature and the Departmental Rules. Emily's situation involves neither a change in family residence nor a change in the status of the 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).

As noted above, the Department has 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 State Board has refused to reverse a late application when the parent was unaware of the filing deadline, *In re Candy Sue Crane*, 8 D.o.E. App. Dec. 198 (1990). As in those two decisions, the fact that Ms. Reinen was not aware of the open enrollment deadlines 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). Emily has never attended the Davenport Community

School District herself, and her fears that something might happen to her, similar to what happened to her cousins at Sudlow Middle School, do not constitute an extraordinary case that cries out for State Board intervention.

Although unfortunate, the evidence that Ms. Reinen received inaccurate information from her private attorney and from one of the Davenport School Board members also does not constitute an extraordinary case that cries out for State Board intervention. The Davenport School Board obviously cannot be bound by any advice received from a parent's private attorney. The Davenport School Board also cannot be bound by inaccurate advice given by one of its members during a telephone conversation with a parent. A single board member cannot bind the whole board. In addition, Ms. Reinen rejected the District's offer to discuss at least five other attendance center options for Emily in the Davenport District besides Sudlow Middle School.²

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 Davenport Community School District made on August 9, 1999, denying the open enrollment application of Appellant on behalf of her daughter, Emily, is hereby recommended for affirmance. There are no costs of this appeal to be assigned under Iowa Code §290.4.

DATE

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

It is so ordered.

DATE

TED STILWILL, DIRECTOR
IOWA DEPARTMENT OF EDUCATION

² Emily's mother is reminded that if she wishes to file a timely open enrollment application for the 2000-2001 school year, she should do so before the January 1, 2000, deadline.