

**IOWA STATE BOARD  
OF EDUCATION**  
(Cite as 18 D.o.E. App. Dec. 4)

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***In re Britney Graham*** :  
  
Amy Graham, :  
Appellant, :  
  
v. : DECISION  
  
Southeast Warren Community :  
School District, :  
Appellee. : [Admin. Doc. # 4148]

The above-captioned matter was heard telephonically on October 27, 1999, before Susan E. Anderson, J.D., designated administrative law judge. Appellant Amy Graham was "present" telephonically and was unrepresented by counsel. Appellee, Southeast Warren Community School District [hereinafter, "the District"], was also present telephonically in the persons of James Poole, Superintendent; and Julie Wilson, Business Manager and 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 June 14, 1999, denying Appellant's late-filed request for open enrollment for her daughter, Britney Graham.

**I.  
FINDINGS OF FACT**

At the time of this appeal, Britney Graham was attending the fifth grade in the District for the 1999-2000 school year. During Britney's fourth-grade year in the District, her homeroom teacher [hereinafter, "the teacher"] had told Britney that she would "beat her to a bloody pulp" because Britney had not changed a math problem quickly enough. Britney was extremely upset and reported the incident to her parents on the evening of February 5, 1999. Mr. and Mrs. Graham immediately contacted the elementary school principal, Charlotte Weaklend, to set up a meeting with the teacher and Ms. Weaklend for the following day, February 6, 1999. During that meeting, Ms. Weaklend offered to switch

Britney to the other fourth-grade homeroom taught by a different teacher. Ms. Weaklend also suggested that Mr. and Mrs. Graham meet with District Superintendent Poole.

Mr. and Mrs. Graham set up a meeting with Mr. Poole for February 10, 1999. During this meeting, and during two subsequent meetings with Mr. Poole, Mr. and Mrs. Graham discussed the incident of February 5, 1999, and asked him to take some action in response to the teacher's "bloody pulp" comment.

Mr. Poole responded that he could not divulge information from a personnel file regarding any action taken with respect to a teacher's conduct. He did tell Mr. and Mrs. Graham, however, that he had conducted an investigation into the teacher's conduct and that some of the allegations appeared to be correct. Mr. Poole indicated that some action was being taken administratively but he could not divulge what that was. He also indicated his hope that since Britney would have a different teacher in fifth grade, her next school year would be an improved situation for Britney.

Mr. and Mrs. Graham spoke to Britney about the offer to transfer out of the teacher's homeroom and into the other homeroom for the remainder of her fourth-grade year. Britney responded by stating that she would rather not because she felt that would be punishing herself due to the fact that all of her friends were in the teacher's class. Britney's parents, therefore, notified Ms. Weaklend and Mr. Poole that they would decline the offer to transfer Britney to the other fourth-grade homeroom. If Britney had transferred to the other homeroom, she would have spent most of the day in the new homeroom. She would still, however, have had the teacher for either science or social studies since the two fourth-grade teachers switched classes to teach those two subjects.

Britney, therefore, completed her fourth-grade year in the teacher's homeroom class. For the approximately four months remaining in the school year from the date of the "bloody pulp" incident to the end of the school year, Britney was extremely reluctant to go to school and her parents had to convince her to attend every morning. Britney feared further demeaning or threatening comments from the teacher.

After the February 5, 1999, "bloody pulp" incident, Britney continued to be uncomfortable because the teacher had a practice of announcing the students' grades on various assignments to the entire class. The evidence showed that the practice of making those announcements was brought to the attention of Ms. Weaklend, who then told the teacher to discontinue the practice, which she did.

In addition to pursuing an administrative response to the teacher's conduct, Mr. and Mrs. Graham had also brought the incident to the attention of the Board. Ms. Graham had written a letter dated February 8, 1999, to Board President Connie Penick regarding the "bloody pulp" incident and had requested the Board to reprimand the teacher in some way.

On March 23, 1999, Mrs. Graham attended a closed session meeting of the Board concerning whether or not the Board should do something in response to the teacher's behavior. Mrs. Graham did not hear anything during the month of April from the Board and, therefore, asked to be placed on the Board's May 1999 agenda. She received a telephone call from Board President Penick, who said that the Board had determined that it would not do anything during its May meeting. When it became apparent to Ms. Graham that the Board would not do anything in response to her request, she filed an open enrollment application on June 2, 1999, for Britney to attend the Pleasantville Community School District for the 1999-2000 school year. On June 14, 1999, the Board met in its regular session and denied the Grahams' open enrollment application for Britney because the application had been filed after the January 1 deadline.

Britney then began her fifth-grade year in the District for the 1999-2000 school year. Mrs. Graham testified that Britney seems to be doing fine this year. She has a different teacher and doesn't see her fourth-grade teacher much at all. The fourth-grade teacher has made no remarks to Britney this year. Mrs. Graham has no trouble getting Britney to go to school this year. Mr. Poole testified that he has checked with Ms. Weaklend, the elementary school principal, and she has reported that to her knowledge there have been no problems this year regarding Britney and the fourth-grade teacher.

In spite of the undisputed evidence that Britney is doing fine this year, Mrs. Graham testified that it would still be safer if Britney were enrolled in a different school this year because "you never know" what might happen. Mrs. Graham therefore appealed the decision of the Board to deny her open enrollment application.

## 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 problems Britney was having in school with her fourth-grade homeroom teacher are not good cause for a late-filed open enrollment application as defined by the Legislature and the Departmental Rules. Britney's situation involved 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).

Although we sympathize with the difficulties Britney experienced during her fourth-grade year in the teacher's homeroom class, her problems do not constitute good cause for filing a request for open enrollment after the January 1 deadline. We conclude that this is not an extraordinary case that requires the Board to exercise its discretion under Iowa Code §282.18(18)(1999). Britney and her parents made the decision to reject Ms. Weaklend's offer to transfer Britney to the other homeroom, which would have substantially decreased her contact with the teacher during the remaining four months of Britney's fourth-grade year. The evidence was undisputed that Britney is

doing fine this year in her fifth-grade homeroom. For these reasons, we conclude that her parents' fears that something further might happen due to the fact that the teacher is still present in the building do not constitute an extraordinary case that cries out for State Board intervention.<sup>1</sup>

Mrs. Graham attempted to introduce into evidence a portion of a document entitled, "*Southeast Warren Community School District Employee Handbook, Policies and Practices for the 1998-1999 School year.*" The document contains some language that relates to "employee conduct and discipline" under Section E. The document also contains a definition of classified personnel which does not include teachers. The administrative law judge indicated that Mrs. Graham's offer into evidence of this document would be taken under advisement and that the document would not be considered in making the decision in this appeal hearing unless the administrative law judge found it to be relevant.

The administrative law judge concludes that the excerpts from the employee handbook which Mrs. Graham attempted to offer into evidence shall not be admitted for the reason that they do not appear to apply to teachers and, therefore, are not relevant to this appeal. In addition, this appeal does not include jurisdiction over a teacher's disciplinary matter.

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 Southeast Warren Community School District made on June 14, 1999, denying the open enrollment application of Appellant on behalf of her daughter, Britney, 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  
STATE BOARD OF EDUCATION

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<sup>1</sup> Britney's parents are reminded that if they wish to file a timely open enrollment application for the 2000-2001 school year for Britney, they should do so before the January 1, 2000, deadline.