

On August 6, 1998, she spoke to West High School's acting principal, Ms. Gallin, to see if Ashley could attend West High School for the 1998-99 school year. Appellant was advised that the school was full with six people on a waiting list and that the transfer would not be possible. Appellant explained Ashley's problems at North High School and how it had affected her emotionally and asked this to be considered as a hardship case. Appellant testified that she was told that would not be possible.

Appellant and her husband then contacted North Scott High School and were told that they had room for Ashley and would be happy to have her. They then initiated the open enrollment transfer out of the District.

Ms. Kozlowski filed her open enrollment application on August 10, 1998. She was advised by Jim Blanche, superintendent of schools, that it would be his recommendation that the request be denied as late without "good cause". He advised her in a letter dated August 11, 1998, that she could attend the August 24, 1998, Board meeting to "appeal his decision".

Ms. Kozlowski appeared at the Board Meeting at the appointed time and taped the proceedings that were submitted as videotape for the hearing panel's review. Superintendent Blanche also advised Ms. Kozlowski that she should submit a doctor's report stating the need for the transfer because of "emotional hardship reasons". Ms. Kozlowski submitted a handwritten note from a doctor who had seen Ashley on August 20, 1998. The note stated as follows:

To whom it may concern:

Ashley was seen in our clinic today and was diagnosed with depression, secondary to situational stress at school

After explaining the situation, Appellant asked the Board members to approve the open enrollment request from Davenport to North Scott Community School District due to the doctor's note, showing Ashley was emotionally stressed at North High School. In addition, Ms. Kozlowski informed the Board that she had enrolled Ashley at North Scott High School and that day was her first day in school.

The video shows that the Board members expressed concern that they did not receive this "hardship information" sooner. The Board then asked if it would be possible for assistant superintendent Howard Huningan to allow this transfer to West High School to keep Ashley in the Davenport District. He stated that he would allow it. The Board then voted to approve Ashley's transfer to West High School. However, the Board voted to deny Ashley's open enrollment application out of the District for the following reasons:

1. The application for open enrollment came in after both the January 1 and the June 30 deadlines and did not qualify under the state-approved reasons for good cause.
2. A slip from a physician was submitted the Friday before the board denied the request stating that the student was depressed due to stress from school. This was determined to not be good cause for a late open enrollment request, since Davenport has other high schools within the district for possible transfer.

(Letter from David E. Lane, 9-10-98.)

Appellant appealed the decision of the Board because she did not want to move Ashley from North Scott to West High School after school commenced.

II. CONCLUSIONS OF LAW

Parents must file open enrollment requests by a deadline of January 1. Iowa Code section 282.18(2)(1997). 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 of children who have "good cause" for missing the January 1 filing deadline. Iowa Code sections 282.18(2) and (16)(1997).

The legislature has defined 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. 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 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)(1997).

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. 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 section 282.18(16) (1997); 281 IAC 17.4.

The problems Ashley was having with school, and the apparent inability of Ashley, her mother, and the District to work together to solve the problems, are not good cause for a late-filed open enrollment application as defined by the legislature and the departmental rules.

There have been many appeals brought to the Iowa Department of Education regarding the definition of good cause since the enactment of the open enrollment law. The State Board has refused to reverse a late application due to ignorance of the filing deadline, In re Candy Sue Crane, 8 D.o.E. App. Dec. 198 (1990); or for missing the deadline because the parent mailed the application to the wrong place, In re Casee Burgason, 7 D.o.E. App. Dec. 367(1990); or 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); or when a parent became dissatisfied with a child's teachers, In re Anthony Schultz, 9 D.o.E. App. Dec. 381(1992); or because the school was perceived as having a "bad atmosphere", In re Ben Tiller, 10 D.o.E. App. Dec. 18(1993); or 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); or 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 Ashley experienced at North High School, her problems do not constitute good cause for filing a request for open enrollment after the January 1st deadline. Nor do we believe this is an extraordinary case which cries out for State Board intervention pursuant to Iowa Code section 282.18(18)(1997).

Any 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 Davenport Community School District made on August 24, 1998, which denied the Appellant's request for Ashley to open enroll to the North Scott Community School District for the 1998-1999 school year, is hereby recommended to be affirmed. There are no costs of this appeal to be assigned.

DATE

ANN MARIE BRICK, J.D.
ADMINISTRATIVE LAW JUDGE

It is so ordered.

DATE

CORINE HADLEY, PRESIDENT
STATE BOARD OF EDUCATION