

**IOWA STATE BOARD
OF EDUCATION
(Cite as 17 D.o.E. App. Dec. 150)**

In re Richard D. Hurd :
Richard Hurd, :
Appellant, :
v. : DECISION
West Des Moines Community :
School District, :
Appellee. :
: [Admin. Doc. # 4113]

The above-captioned matter was heard June 2, 1999, before Ann Marie Brick, J.D., legal consultant and designated administrative law judge. Appellant Richard Hurd was present and represented by Tim Pearson of Laden & Pearson, P.C., of Des Moines, Iowa. The Appellee, West Des Moines Community School District [hereinafter, “the District”], was present in the person of Associate Superintendent Galen Howsare. The District appeared *pro se*.

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 sections 282.18 and 290.1(1999). 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.

Appellant seeks reversal of a decision of the Board of Directors [hereinafter, “the Board”] of the District made on February 23, 1999, which denied his request for open enrollment for his son. The basis of the Board’s decision was that the application was filed after the January 1 deadline without good cause. Appellant’s contention on appeal is that good cause does exist for the late filing.

**I.
FINDINGS OF FACT**

The relevant facts are not in dispute and can be summarized briefly. Appellant’s son, Richard D. Hurd, is 15 years old and was in ninth grade during the 1998-1999 school year. Richard has attended Des Moines Christian School since kindergarten. At the February 4, 1999, Association meeting of the Des Moines Christian School, it was disclosed that there would be a number of changes in the organization and functioning of the school for the 1999-2000 school year. Primarily, these involved changes in policies and the departure of staff and administration. Mr. Hurd testified that prior to the

February 4, 1999, meeting, he had no direct information about the changes that were likely to occur in the school. It was common knowledge that the superintendent had been terminated in November 1998. However, the extent of the subsequent “fall out” and other changes in the composition of the faculty and student body were not known until the February 4th meeting.

Mr. Hurd testified that there were around 65 students in his son’s 9th grade class for the 1998-1999 school year. At the time of the appeal hearing, he testified it appears there will be no more than 54 students in all of the grades 9 through 12 next fall. He has serious questions about the ability of the senior high school to operate with such a low number of students. He stated that just a couple of weeks ago, the number of students intending to enroll next fall was as low as 20. He believes that the school will not make a formal announcement that it is closing until it can be determined whether that would be necessary. Mr. Hurd is aware that if a decision to close the school is made after June 30th, he will no longer qualify for the good cause provisions of 281 Iowa Administrative Code 17.4(2). That is because the good cause provisions are only available “after the filing deadline of January 1 and until June 30 of the school year preceding the school year for which open enrollment is requested. ...” 281 IAC 17.4.

On February 12, 1999, Mr. Hurd filed his application to open enroll to the Urbandale District for his son’s 10th grade year. He testified that he felt it was important for his son to attend school in Urbandale because of smaller numbers there. The population of the current 9th grade Urbandale class is only 250 to 300 students. In contrast, the current 9th grade enrollment in the West Des Moines District is approximately 650 students. Mr. Hurd attended the West Des Moines Board meeting on February 23, 1999, and spoke during the open forum. He urged the Board to approve his open enrollment application because of the circumstances referred to above.

The Associate Superintendent advised the Board good cause would apply if the nonpublic school either closes or loses its accreditation. He indicated that Des Moines Christian School has not met either of these criteria and therefore, recommended that Mr. Hurd’s request be denied. This appeal followed.

II. CONCLUSIONS OF LAW

At the time the open enrollment law was written, the legislature apparently recognized that certain events would prevent a parent from meeting the January 1 deadline. Therefore, there is an exception in the statute for two primary 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) (1999).

The legislature chose to define 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 deadline and before June 30. 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 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.

Id. at subsection (16). (Emphasis added.)

The "permanent closure of a nonpublic school" was recently added by the Legislature to the statutory definition of good cause. (*See*, 1996 Iowa Acts ch. 1157, section 2). Yet, the present appeal is problematic. Although the circumstances come very close to meeting the definition of "good cause," they do not meet the letter of the Law because Des Moines Christian School has not permanently closed. Certainly, the West Des Moines Community School District acted legally in denying the Hurds' application for open enrollment.

However, after a school like Des Moines Christian has lost a substantial number of its faculty and student body, so that the population of its high school decreases by approximately 75%, one can argue that such a change results in a reorganization of the school. The change in the program being offered is so substantial, that according to Mr. Hurd, it is no longer the same school that he had selected for his son.

We believe under the unique circumstances of this case, that Mr. Hurd's open enrollment application should be granted under the provision of statutory good cause that includes "a similar set of circumstances consistent with the definition of good cause"

authorized by Iowa Code section 282.18(16)(1999). Granted, this exact circumstance is not specifically mentioned in the list of “good cause” situations enumerated by the Iowa Legislature. *See*, Iowa Code section 282.18(16)(1999). However, if the Legislature intended to limit the “good cause” exception to only those situations described in the statute, it would not have included the broader language: “or a similar set of circumstances consistent with the definition of good cause.” *Id.*

For these reasons, it is recommended that the State Board find that the unique circumstances of this case fit the definition of good cause as a “similar set of circumstances” relating to the reorganization of a school district, and grant the open enrollment request for Richard D. Hurd to the Urbandale Community School District for the fall of the 1999-2000 school year.

All 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 West Des Moines Community School District made on February 23, 1999, that denied Appellant’s request for open enrollment for Richard D. Hurd to the Urbandale Community School District for the 1999-2000 school year, is hereby recommended for reversal. 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