

**IOWA STATE BOARD  
OF EDUCATION**  
(Cite as 17 D.o.E. App. Dec. 136)

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*In re Kassidi Todd* :

Marlan & Doreen Todd, :  
Appellants,

v. : DECISION

River Valley Community School :  
District, :  
Appellee. :  
: [Admin. Doc. # 4133]

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The above-captioned matter was heard on May 28, 1999, before a hearing panel comprising Susan Fischer and Sandra Renegar, consultants, Bureau of Practitioner Preparation and Licensure; and Ann Marie Brick, J.D., legal consultant and designated administrative law judge, presiding. Appellants Marlan and Doreen Todd were “present” telephonically and were unrepresented by counsel. The Appellee, River Valley Community School District [hereinafter, “the District”], was “present” telephonically in the persons of Ron Pilgrim, superintendent; Susan Mohr, board secretary; and Terry Kenealy, superintendent of the Galva-Holstein Community District. The District was also unrepresented by counsel.

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.

Appellants seek reversal of a decision of the Board of Directors [hereinafter, “the Board”] of the District made on April 19, 1999, which denied their open enrollment application for their daughter, Kassidi.

**I.**

**FINDINGS OF FACT**

The facts in this appeal hearing were not in dispute.

Prior to 1990 Marlan and Doreen Todd and their children lived on a farm in the Galva-Holstein Community School District. Their children were enrolled in that district’s schools. At the time of the appeal hearing, two of the children had graduated

from the Galva-Holstein Schools, and Kassidi Todd, the subject of the appeal, was a ninth grade student there.

In 1987, the Todds purchased an additional farm, about three miles from the first one. In 1990 they moved to the second farm, but continued farming operations on the first. The Todd children, including Kassidi, continued to attend the Galva-Holstein Schools.

Ron Pilgrim, superintendent of the River Valley Community School District, testified that in mid-February 1999 a District board member observed a Galva-Holstein bus picking up a student near the Todd's residence. The board member, who was familiar with the area, was certain that location was part of the River Valley District. The board member reported this information to Mr. Pilgrim, who contacted Terry Kenealy, the Galva-Holstein superintendent. Mr. Kenealy checked the boundaries, determined that the location was indeed within the River Valley District and agreed that the Galva-Holstein bus would no longer enter River Valley territory. Mr. Kenealy then notified the Todds that the property they were living on was in the River Valley District. Mr. Pilgrim testified that it became clear at this point that Kassidi and her two older siblings had attended Galva-Holstein for years, even though they were residents of River Valley. He also testified that River Valley had never included the Todd children in its student count and he assumed Galva-Holstein had.

Mr. Kenealy testified that the Galva-Holstein bus observed by the River Valley board member was not picking up Kassidi Todd because she drives herself to school. The bus was picking up an open-enrolled student for the first time. That student, however, was in the wrong location and should have been at a pick-up point within the Galva-Holstein District. Mr. Pilgrim explained that the Board had approved this student for open enrollment because the family had moved from Galva-Holstein to River Valley, one of the statutory "good cause" reasons for applying after January 1. Mr. Kenealy testified that Galva-Holstein's records show the Todd's first farm as their mailing address, so the district was unaware of their change of residence in 1990.

Mr. Kenealy discussed their various options with the Todds. In March 1999, they applied for open enrollment for Kassidi to attend Galva-Holstein. The Board denied the application for being untimely filed. Mr. Pilgrim testified that the Board's policy is to deny all untimely filed open enrollment applications.

## **II. CONCLUSIONS OF LAW**

This case represents the need to balance several important but often competing interests under the Open Enrollment Law: the need for parents to observe statutory timelines and procedures in order to enjoy the right to open enroll their children; and the need for school boards to be flexible in applying those timelines and procedures when it

is necessary to accommodate an unusual set of circumstances and the best interest of the children involved.

In the 1992 Legislative Session, the Open Enrollment statute was amended to give the State Board authority to set aside statutory limitations on open enrollment when to do so would serve the best interest of the child.

Notwithstanding the general limitations contained in this section, in appeals to the state board from decisions of school boards relating to student transfers under open enrollment, the state board shall exercise broad discretion to achieve just and equitable results which are in the best interest of the affected child or children.

1992 Iowa Acts, Ch. 1135, §5; Iowa Code §282.18(18)(1999). "This statutory amendment has been viewed by the State Board as a discretionary exercise of the State Board's power of appellate review to be applied judiciously whenever a child's unique situation cries out for State Board intervention. We see it as an opportunity to recognize a form of "good cause" the Legislature was unable to envision, not unwilling to envision." In re Cameron Kroemer, 9 D.o.E. App. Dec. 302, 307-08(1992).

When the Todd family unwittingly moved into the River Valley District in 1990, they had an absolute right to continue to send their children to the Galva-Holstein Schools. The Legislature did not condition this "option" upon the filing of an open enrollment application by January 1. The State Board's rules provide that a notice of continuation should be filed with the new district of residence "for processing and record purposes". 281 IAC 17.8(7).

In the present case, the Todd family did not meet the letter of the law. But, to deny their request to continue Kassidi's education in a district all three Todd children attended in *good faith* for their entire elementary and secondary education would certainly be contrary to her best interest. It would also seem to be contrary to the spirit of Iowa Code §282.18(10), which seeks to avoid "interruption in the child's educational program". Id.

This is not the first time these circumstances have been addressed by the State Board. In two recent cases, the State Board has allowed requests for open enrollment to continue attending a school when the student had been attending the school, under mistaken residency, for a number of years. *See, e.g., In re Nicolas Wayne Martin and In re Mark Ball*, 16 D.o.E. App. Dec. 230 (1998)(students attended Lone Tree Schools for seven years and five years respectively before Lone Tree discovered they were actually residents of the West Liberty Community School District); *In re Elizabeth, Jennifer, and Alberto Landeros*, 16 D.o.E. App. Dec. 172 (1998)(five children of two families attended

Lone Tree Schools all of their school years before it was discovered that they lived in West Liberty's District; the children were in the 10<sup>th</sup>, 7<sup>th</sup>, 6<sup>th</sup>, 5<sup>th</sup>, and 2<sup>nd</sup> grades at the time their applications to continue were denied for being late-filed).

For these reasons, it is recommended that the State Board of Education exercise its subsection (18) power to allow Kassidi Todd to remain in the Galva-Holstein District to continue her education.

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 River Valley Community School District made on April 19, 1999, that denied the Appellants' request for open enrollment for Kassidi Todd to continue to attend the Galva-Holstein Community School District, is hereby recommended for reversal. There are no costs of this appeal to be assigned.

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DATE

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ANN MARIE BRICK, J.D.  
ADMINISTRATIVE LAW JUDGE

It is so ordered.

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DATE

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CORINE HADLEY, PRESIDENT  
STATE BOARD OF EDUCATION