

**IOWA STATE BOARD
OF EDUCATION
(Cite as 16 D.o.E. App. Dec. 312)**

In re Bruce Houck, Jr. :

Bruce Houck, Sr. :
Appellants,

v. : DECISION

Twin Cedars Community :
School District,
Appellee. :

[Admin. Doc. #4066]

The above-captioned matter was heard telephonically on March 3, 1999, before Ann Marie Brick, J.D., designated administrative law judge. The Appellant, Bruce Houck Sr., was “present” telephonically and was unrepresented by counsel. The Appellee, Twin Cedars Community School District [hereinafter, “the District”], was present telephonically in the person of Larry Fudge, Superintendent. The District also 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.

The Appellant seeks reversal of a decision of the Board of Directors [hereinafter, “the Board”] of the District made on December 14, 1998, denying his late-filed request for open enrollment for his son, Bruce Houck, Jr., to the Knoxville Community School District, beginning immediately. Mr. Houck filed after he received custody of his son, who moved in with him from El Paso, Texas.

**I.
FINDINGS OF FACT**

Mr. Houck lives in Knoxville and is employed at the Veteran’s Administration (VA) Hospital there. He lives with his second wife and his son, Bruce, who he refers to as “Junior”. Their home is in the Twin Cedars Community School District. Junior is presently in the seventh grade at Twin Cedars.

Mr. Houck was divorced from Junior's mother in 1992. They lived in El Paso, Texas, at the time. The Court gave both parents "joint managing conservatorship".

Some time later, Mr. Houck moved to Iowa. Junior and his mother began to have problems getting along. These problems culminated in October 1998, when Junior was hospitalized in Texas. He was in the hospital from October until the end of November as a result of being physically and emotionally abused by his mother. According to Mr. Houck, the doctors would not release Junior to his mother. The doctors would only release Junior to Mr. Houck as the sole guardian.¹ That is why Junior came to live with Mr. Houck and his present wife in late November. There are no other children in the home.

Mr. Houck wanted Junior to attend school in Knoxville. This is because the Knoxville District is close to their home and because he could drive Junior to school daily on his way to work. Mr. Houck applied for open enrollment on December 1, 1998.

The District Board unanimously denied the open enrollment application at its December 14, 1998, meeting. Mr. Houck testified that he did appear at the Board meeting to explain the circumstances. However, Superintendent Fudge explained that the Board always denies late-filed open enrollment applications. There has never been an exception to this policy in his eight years as superintendent. The Superintendent also noted that Appellant's open enrollment application has already been approved for the 1999-2000 school year.

In spite of that, Mr. Houck would like the open enrollment to begin immediately. He said that Junior has not been getting along well at Twin Cedars. A couple of weeks ago, he was suspended for being involved in a fight at school. Mr. Houck stated that Junior complains of being called disparaging names because of his ethnic background: he is half Mexican.

The Superintendent testified that Junior's attendance is slightly better than 50%. He thinks many of Junior's academic problems can be attributed to this fact. Mr. Houck works at the VA Hospital from 7:30 a.m. until 4:00 p.m. The school bus arrives to pick up Junior after Mr. Houck has left for work. He would like to be able to transport Junior to Knoxville CSD on his way to work in the mornings. He stated that the Knoxville District advised him that he should not enroll Junior in the District unless his open enrollment application was approved or else he would be responsible for the payment of nonresident tuition. Since Mr. Houck could not afford that alternative, he enrolled Junior in the Twin Cedars District and has appealed the open enrollment denial to the State Board of Education.

¹ Mr. Houck is currently involved in litigation in Texas to modify the custody decree.

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), (4) (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 (18).

Unfortunately, the application for open enrollment under this "good cause" exception must be filed by June 30. Because of particular circumstances surrounding Junior's relocation to Iowa in November, there was no way for Appellant to comply with this requirement. Yet there can be little question that the present situation fits the definition of "good cause."

In 1992, the General Assembly amended the open enrollment law to add the following new subsection:

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.

Iowa Code § 282.18(18) (1999).

The State Board has exercised its subsection 18² power in five previous cases. The first case involved the stepson of a minister whose study and work had taken him to four different locations in four years. *In re Christopher Forristall*, 10 D.o.E. App. Dec. 262 (1993). Christopher had not weathered the moves well, particularly when he was in a large school. His stepfather was finally assigned to a church in a small community outside of the town of Ft. Dodge but the parsonage was within the school district of Ft. Dodge. Appellant wanted his stepson to attend school in the smaller district of Eagle Grove where his church and community were, but he had missed the June 30 deadline for "good cause" filing. *Id.* at 263. Christopher was entering his junior year, and his parents were convinced he would fare better in Eagle Grove, so they would be applying for open enrollment for his senior year anyway. In order that Chris not attend five or six different schools in as many years, the State Board used subsection (20) to order his release from Ft. Dodge for his junior year. *Id.* at 267.

The second case justifying the use of this special exception to the normal timelines was one involving a student who moved here from California where he had been living in an abusive situation with an alcoholic mother. *In re Ann and Patrick Taylor*, 10 D.o.E. App. Dec. 285 (1993). Patrick was released by the State Board after he arrived in Iowa to live with his grandparents and older siblings in August, missing the open enrollment deadline. *Id.* at 291. Open enrollment for Patrick was advised to keep the children together as Patrick's older brothers were attending in Lamoni under a sharing agreement. *Id.* at 286.

The third case involved the change in custody of a 15 year-old high school sophomore. *In re Bryan Swift*, 12 D.o.E. App. Dec. 24 (1994). Bryan's parents divorced when he was three years old and the court placed Bryan's physical custody with his mother. As a result of a protracted custody dispute which lasted almost a year, the court modified the custody decree to honor Bryan's wish to live with his father and attend a

² Formerly referred to as the State Board's "subsection 20" power, this section was renumbered in 1996 to sec. 282.18(18). See, 1996 Iowa Acts, chapter 1157, sections 1-3. It is now referred to as the "subsection 18" power.

particular school outside of the father's attendance area. The dispute was not resolved until August 1994. The State Board used subsection 20 to grant Bryan's open enrollment request.

The fourth case decided under subsection 20 was *In re Abrienne Long*, 12 D.o.E. App. Dec. 87 (1994). The facts in the Long case are very similar to *Swift*. In *Long*, as in *Swift*, a high school student's change in custody decree was not entered until August. The only distinction between the two cases was the fact that unlike Bryan Swift, who had never attended school in the district to which he open enrolled, Abrienne Long attended all but 3 months (when she was with her mother) in the district to which she open enrolled.

The fifth and final case decided under subsection 20 was *In re Shawn and Derek Swenson*, 12 D.o.E. App. Dec. 150(1995). Mr. Swenson's divorce decree established him as his sons' custodian and legal guardian in the event of their mother's death. That provision became operative on August 20, 1994, when the boys' mother died of cancer. The boys had lived with their mother in California and were relocated to Cedar Rapids, Iowa, after her death. This occurred very close to the beginning of school. For many reasons, Mr. Swenson had selected the College Community School District as the best place for the boys. The State Board used subsection 20 to grant the Swenson open enrollment requests.

The present situation, like those described above, presents an appropriate occasion for the use of the State Board's discretionary power. For some unknown reason, the custody changes described above all occurred during the month of August. In the present situation, the change of custody occurred after the school year had already commenced. That fact makes this a more complicated situation. Since Houck could not afford to pay nonresident tuition for his son to attend in Knoxville in December, he enrolled Junior in Twin Cedars pending the outcome of this appeal.

Ordinarily, we would not think it would be advantageous for a student to change schools this late in the school year. However, Junior's attendance problems are a concern. It would certainly be in his best interest to attend school on a more regular basis. Attendance is more likely to improve if Mr. Houck is able to transport his son to school every day. The evidence shows that it would be in the best interest of this student to make that opportunity available as soon as possible.

It is therefore recommended that the State Board exercise its authority under Iowa Code section 282.18(18)(1999) to overturn the District Board's denial of Appellant's application for open enrollment from the Twin Cedars Community School District to Knoxville Community School District. This means that Bruce Houck, Jr. would be eligible to attend the Knoxville Community School District under open enrollment for the remainder of the 1998-99 school year.

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 Twin Cedars Community School District made on December 14, 1998, which denied the open enrollment request for Bruce Houck, Jr. for the 1998-99 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
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It is so ordered.

_____ DATE	_____ CORINE HADLEY, PRESIDENT STATE BOARD OF EDUCATION
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