IOWA STATE DEPARTMENT
OF EDUCATION
(Cite as 16 D.o.E. App. Dec. 166)

In re Jason M. Moody	:	
LuAnne Moody, Appellant,	:	
v.	:	DECISION
College Community School District, Appellee.	:	
		[Admin. Doc. #4012]

This appeal was heard on August 10, 1998, before a hearing panel comprising Sandy Hulse, consultant, Bureau of Instructional Services; Lee Crawford, consultant, Bureau of Technical and Vocational Education; and Ann Marie Brick, legal consultant and designated administrative law judge, presiding. The Appellant, Ms. LuAnne Moody, was present and was unrepresented by counsel. The Appellee, College Community School District [hereinafter, "the District"], was present in the persons of Dr. Mick Starcevich, superintendent, and Mr. James Steffens, board secretary and business manager. 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(1997). 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 June 15, 1998, which denied her request for open enrollment for her son, Jason. The Board's decision was based on the determination that Ms. Moody's application was received past the deadline and there was no good cause for the late filing.

I.

FINDINGS OF FACT

Robert and LuAnne Moody live in Cedar Rapids and are residents of the Cedar Rapids Community School District. Mrs. Moody is an employee of that district. Their son, Jason, attended the Cedar Rapids Schools from kindergarten through the first trimester of ninth grade, which he completed at Jefferson High School. At Jefferson, Jason's grades averaged below a "C" and he was frequently absent. Jason is a special education student, weighted 3.74.

In November 1997, Jason was adjudicated delinquent by the juvenile court and placed in a behavioral disorder program at Dubuque Hempstead High School, where he completed ninth grade with almost an "A" average and two absences. His placement ended in June 1998.

Mrs. Moody testified that the Dubuque Hempstead program included an interventionist and a time-out room, in contrast to the program at Jefferson High School, which does not have an interventionist and uses out-of-school suspension. The Moodys decided that Jason needed a program comparable to that at Dubuque Hempstead to help him be successful in school upon the end of his placement. Mrs. Moody discussed program options with staff members of Grant Wood Area Education Agency (AEA) and the Cedar Rapids Schools. The Moodys then concluded that the behavioral disorder program of the College Community School District would meet Jason's needs. Mrs. Moody filed an open enrollment application dated December 22, 1997, for Jason to open enroll to the College Community School District. It was received by the Cedar Rapids Community School District on December 23, 1997,[1] and was approved on June 6, 1998. The application was received by the College Community School District on June 10, 1998, and was denied by the Board on June 15, 1998, because it was not filed in a timely manner.

Mr. Steffens, testifying on behalf of the District, stated that the open enrollment rules require the resident district to contact the receiving district to determine if there is room in a special education program. This is to be done prior to processing an open enrollment application, and the Cedar Rapids District failed to do this. Mr. Steffens also testified that the District has insufficient classroom space in its high school behavioral disorder program and has recently denied two other open enrollment requests for it. Also, the program is designed for students weighted 2.34, not 3.74, and would not meet Jason's needs. Mr. Steffens acknowledged that he recommended that the Board deny this application for being filed late, although the more appropriate reason would have been because of insufficient classroom space.

Superintendent Starcevich, testifying on behalf of the District, stated that the critical issue is that the District's program is designed for students weighted 2.34, and Jason is weighted 3.74. He doubts that the District could provide a quality program for Jason.

II.
CONCLUSIONS OF LAW

The issue raised in this appeal is whether a receiving district is required to approve an open enrollment application when the application has been timely filed with

[1] **The form is dated "12-23-98"; a typographical error by the Cedar Rapids District.**

the sending district, but was not approved by the sending district until six months later. Upon receiving Appellant's application for open enrollment in June 1998, the receiving district denied the application because it was filed late. The Board action that is the subject of this appeal is the action of the receiving district taken on June 15, 1998. The minutes of that meeting state that the motion was unanimously approved "to deny incoming 1998-99 open enrollment of Jason Moody (grade 9) as not timely filed". (Bd. Min. June 15, 1998.) The minutes reflect no other discussion about insufficient classroom space or the appropriateness of the program.

The Iowa Open Enrollment Law creates a right for parents to leave their residential school district if their requests are filed in a timely manner. At the time this appeal arose, the applicable deadline was January 1 of the year preceding the school year for which open enrollment was sought. Iowa Code section 282.18(2)(1997). If an application for open enrollment is timely filed, or "good cause" for late filing exists, and the sending district approves the application, the receiving district may not deny the application unless one of the following conditions exists:

> 1) There is insufficient classroom space and the Board has adopted and followed a written policy defining insufficient classroom space for the District. Iowa Code §§282.18(2) and (11); 281 IAC 17.4 and 17.6.
>
> 2) When a district has a desegregation plan or order; has adopted and followed a policy containing objective criteria for determining when a request would adversely impact the desegregation plan or order, and the superintendent finds that enrollment would adversely affect the district's implementation of its desegregation plan or order. Iowa Code §§282.18(3) and (12)(1997); 281 IAC 17.4 and 17.6.
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> 3) When the student has been suspended or expelled and not reinstated in the sending district. Iowa Code §282.18(14)(1997); 281 IAC 17.8.
>
> 4) If the child requires special education programming, which is not offered in the receiving district. Iowa Code §282.18(8)(1997).
>
> 5) If the receiving school is a laboratory school as described in Iowa Code chapter 265, it may deny an open enrollment application as the receiving district and the denial is not subject to an appeal under Iowa Code §290.1. Iowa Code §282.18(15) (1997).

None of the above conditions exist in the present case. The College Community School District Board denied Appellant's application on June 15, 1998, on the grounds that it was not timely filed. This was an error. Appellant filed her application in a timely manner. The problem occurred because Cedar Rapids failed to act on the "open enrollment request by no later than February 1 of the year preceding the school year for which the request is made", as is required by 281 IAC 17.3(2). We do not know why the Cedar Rapids District failed to take action on Appellant's application for nearly six months. The Cedar Rapids District was not a party to the appeal. We agree with the statement made by Mrs. Moody that if the Cedar Rapids District failed to deal with her application in a timely manner, her son should not be the one to suffer the consequences.

In answer to Appellant's contention, Mr. Steffens stated that the open enrollment rules require the resident district to contact the receiving district to determine if there is room in a special education program. He could not specify the particular rule to which he was referring but the applicable law states as follows:

> If a request filed under this section [open enrollment] is for a child requiring special education under chapter 256B, the request to transfer to the other district shall only be granted if the receiving district maintains a special education instructional program which is appropriate to meet the child's educational needs and the enrollment of the child in the receiving district's program would not cause the size of the class in that special education instructional program in the receiving district to exceed the maximum class size in rules adopted by the state board of education for that program. ...

Iowa Code §282.18(8)(1997).

The departmental rules implementing the Open Enrollment Law state that in regard to special education students:

> "The final determination of the appropriateness of a special education instructional program shall be the responsibility of the director of special education of the area education agency in which the receiving district is located, based upon the decision of a diagnostic-education team of the area education agency in which the receiving district is located. In situations where there is no difference in appropriateness of the program for the individual special education pupil between the resident and receiving district, the open enrollment request shall be approved."

281 IAC 17.11.

Both Mr. Steffens and Superintendent Starcevich testified that there were two reasons why Jason's open enrollment could not be approved:

1) The special education program had insufficient classroom space; and

2) The District did not have a special education program appropriate to meet Jason's needs.

In spite of Mr. Steffens' assertions to the contrary, the appropriateness of the special education program was not a consideration in the denial of Appellant's open enrollment application. The issue was not raised by Appellee until the time of the appeal hearing.

Unfortunately for the District, Iowa Code §290.1 only allows appeals to the State Board by "[a] person aggrieved by a decision or order of the board of directors of a school corporation in a matter of law or fact. ..." The basic principles of fairness require that the focus of the appeal be on the actual decision that was made by the Board; not a subsequent justification for the denial of an open enrollment application which we are asked to substitute for the Board's decision.

Appellant filed for open enrollment before the January 1 deadline. Her application was not acted upon by the sending district until June 6, 1998. The application was erroneously denied on June 15, 1998, by the receiving district on grounds which may constitute a mistake of law or of fact. If the receiving district thought a "late" application refers to the actions of the sending district, that would be a mistake of law. If the receiving district thought that an open enrollment application acted on by a sending district on June 6, 1998, must have been filed after the January 1 deadline, then that would be a mistake of fact.

The State Board is not in a position to decide whether or not the program at the College Community School District is appropriate to meet Jason's needs. As provided by the Open Enrollment rules, "the final determination of the appropriateness of the special education instructional program shall be the responsibility of the director of special education services of the area education agency in which the receiving district is located". 281 IAC 17.11. This decision is based upon the recommendation of a diagnostic-education team of the area education team in which the receiving district is located. Id.

The evidence shows that Ms. Moody discussed program options with staff members of the Grant Wood AEA and the Cedar Rapids Schools. Apparently, the AEA, familiar with the programs of the College Community School District, concluded that Jason's needs could be met by Appellee. Whether that is true must be determined by the appropriate special education staff. The State Board is not deciding that issue in this appeal.

At this point, we must decide the issue brought before us: whether the District properly denied Ms. Moody's open enrollment application. We conclude that Appellant's application for open enrollment was timely filed with the Cedar Rapids Community School District on December 23, 1997. Therefore, it was an error for the Board of the College Community School District to deny the request on the grounds that it was not timely-filed.

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 College Community School District made on June 15, 1998, that denied LuAnne Moody's timely-filed request for open enrollment for her son, Jason, into the District 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

It is so ordered.

_____ _____

DATE

CORINE HADLEY, PRESIDENT
STATE BOARD OF EDUCATION