IOWA STATE DEPARTMENT
OF EDUCATION
(Cite as 16 D.o.E. App. Dec. 125)

In re Tyna & Anthony Richie,	:	
Gordon & Karen Richie, Appellants,	:	
v.	:	DECISION
Southeast Warren Community School District,	:	
Appellee.	:	[Docket # 4004]

This case was heard telephonically on June 26, 1998, before a hearing panel comprising Dr. Tom Andersen, Bureau of Administration/School Improvement Services; Dr. Sandy Reneger, Bureau of Practitioner Preparation & Licensure; and Amy Christensen, designated administrative law judge, presiding. Appellants, Mr. and Mrs. Richie, were present telephonically and were unrepresented by counsel. Appellee, Southeast Warren Community Schools [hereinafter, "the District"], was present telephonically in the person of Mr. James Poole, Superintendent. The District was 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 Director of the Department of Education have jurisdiction over the parties and subject matter of the appeal before them.

The Appellants seek reversal of a decision of the Board of Directors [hereinafter, "the Board"] of the District made on May 11, 1998, which denied their requests for open enrollment for their children. The basis of the Board's decision was that the applications were late.

I.
FINDINGS OF FACT

The Richies live in Milo, Iowa, which is in the Southeast Warren Community School District. The Richies moved to Milo in March of 1997. Tyna was in seventh grade during the 1997-98 school year. Anthony was in ninth grade during the 1997-98 school year. The children have done well academically. However, the Richies want their children to open enroll to the Indianola District for two reasons.

The children, particularly Tyna, have been having trouble finding friends in the District. Mr. Richie testified the children feel like they do not fit in the District, and he would like them to have better opportunities to grow socially in a larger district. He testified other students call Tyna names, and she has come home crying from school. He also testified she does not want to go to school because of this. After the Richies submitted their open enrollment application, Mr. Richie testified the harassment intensified in terms of the frequency of the name calling.

Mr. Richie testified he called the school once earlier this year to talk about the harassment. The principal was unavailable, so Mr. Richie talked with Tyna's homeroom teacher. He testified he has not talked with school officials regarding the problem since then. Superintendent Poole testified he had not been told by the principal that there were any problems with Tyna and Anthony, although this does not necessarily mean there weren't any.

The second reason the Richies would like to open enroll Tyna and Anthony relates to the physical condition of the schools in the District. Mr. Richie testified to numerous problems with the schools. He also testified that the problem seems to stem from an inability of the District to decide whether to build a new single location elementary school, or a K – 3 building in Milo, and a separate 4 – 6 building in Lacona. Superintendent Poole testified he is also frustrated by this.

Mr. Richie testified they did not realize there was a January 1 deadline for filing for open enrollment. The Richies filed for open enrollment on April 27, 1998. The Board denied the applications at the May 11, 1998 Board meeting because they were filed past the deadline.

The District does not have a written open enrollment policy which requires parents to file applications for open enrollment by January 1. The District has not had any late-filed open enrollment requests out of the District since Superintendent Poole came to the District three years ago. Shortly after he came to the District, Superintendent Poole asked the Board to consider following the statutory deadlines for open enrollment requests, and the Board stated this is what they would do. This action is reflected in the minutes of a Board meeting held soon after Mr. Poole came to the District[1].

The District publishes notice of the open enrollment deadlines each year. In 1997, the notice was published in the June/July issue of the school newsletter. The newsletter was sent to every resident in the District about the first of June, 1997.

[1] We recommend that all districts have a written open enrollment policy which clearly states application procedures, deadlines, and exceptions (if any).

II.
CONCLUSIONS OF LAW

The open enrollment law was written to allow parents to maximize educational opportunities for their children. Iowa Code Section 282.18(1)(1997). However, in order to take advantage of the opportunity, the law requires that parents follow certain minimal requirements, including filing the application for open enrollment by January 1 of the preceding school year. Iowa Code section 282.18(2)(1997).

At the time the open enrollment law was written, 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), (4), 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).

The Richies did not know there was an application deadline of January 1st. They want to open enroll their children because of the social problems they are having with fellow students, and because of the poor physical condition of the schools in the District, as discussed above in the findings of fact. While these may be good reasons for wanting to open enroll their children, they are not good cause for filing an application late as defined by the law. 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. Only a few of those cases have merited reversal of the local board's decision to deny the applications. 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 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 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 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).

In this case, as in the others, we are not being critical of the Appellants' reasons for wanting open enrollment. However, the reasons given for not filing the application by the deadline do not meet the "good cause" definition contained in the Iowa Code. Nor do they constitute a "similar set of circumstances consistent with the definition of good cause". Iowa Code section 282.18(16)(1997). Nor is this case one which is of such unique proportions that justice and fairness require the State Board to overlook the regular statutory procedures. Iowa Code §282.18(18)(1997). This case does not meet the Van Bemmel guidelines for allowing Tyna to exit the District due to harassment. In re Melissa J. Van Bemmel, 14 D.o.E. App. Dec. 281 (1997). We urge the Richies and the District to work together to assist the children with the social difficulties they are having.

The legislature put a deadline of January 1 into the open enrollment law. Iowa Code §282.18(2)(1997). The District has had an oral policy of requiring parents to file their applications by the deadline for approximately three years. State law clearly allows the District to deny open enrollment if the applications are filed after the deadline, and the District acts consistently to deny late-filed applications.

The District published notice of the open enrollment deadlines in the June/July 1997 school newsletter, which was sent to all residents of the District. The departmental rule requires that notice of the deadline must be given to all parents by September 30 of each year. 281 IAC 17.3(2). Therefore, the District complied with the requirement of the rule.

We see no error in the decision of the Board to deny open enrollment. The Board's decision to deny open enrollment was consistent with state law and the rules of the Iowa Department of Education. Therefore, there are no grounds to justify reversing the District Board's denial of the open enrollment applications.

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 Southeast Warren Community School District made on May 11, 1998, which denied the Appellants' late-filed requests for open enrollment for their children for the 1998-99 school year, is hereby recommended for affirmance. There are no costs of this appeal to be assigned.

_____ _____

DATE

AMY CHRISTENSEN, J.D.
ADMINISTRATIVE LAW JUDGE

It is so ordered.

_____ _____

DATE

TED STILWILL, DIRECTOR
DEPARTMENT OF EDUCATION