

**IOWA STATE DEPARTMENT
OF EDUCATION
(Cite as 16 D.o.E. App. Dec. 111)**

In re Kiley Auten,	:	
Harold Auten, Appellant,	:	
v.	:	DECISION
Villisca Community Schools, Appellee.	:	[Docket # 4003]

This case was heard telephonically on June 19, 1998, before a hearing panel comprising Mr. Judge Brown, Bureau of Administration/School Improvement Services; Dr. David Wright, Bureau of Children, Family, and Community Services; and Amy Christensen, designated administrative law judge, presiding. Mr. Auten was present telephonically and was unrepresented by counsel. Villisca Community Schools [hereinafter, "the District"], was present telephonically in the persons of Mr. Robert Busch, Superintendent; Ms. Shirley Maxwell, Board Secretary; and Mr. Lee Haidsiak, Secondary School Principal. 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 Appellant seeks reversal of a decision of the Board of Directors [hereinafter, "the Board"] of the District made on April 27, 1998, which denied his request for open enrollment for his son. The basis of the Board's decision was that the application was late.

**I.
FINDINGS OF FACT**

The Autens live in Villisca, Iowa, which is in the Villisca Community School District. Kiley was in seventh grade during the 1997-98 school year. Kiley and his parents want him to open enroll to the Clarinda District because of the difficulties he has been having at Villisca.

Kiley's grades have dropped. In April mid-term reports to parents, Kiley had a "D" in two classes. The reports state this is because Kiley had not turned in assignments. Mr. Auten testified it has been difficult to motivate Kiley this semester. He testified this is because Kiley has been harassed by several students on a frequent basis for the last two years, and it has gotten worse this semester. Mr. Auten testified when Kiley is bumped in the hall by another student, he doesn't know whether it is accidental or intentional, so he turns around and starts swinging, and then he gets in trouble. Mr. Auten testified one of Kiley's classmates threatened to beat up Kiley's younger brother. He testified Kiley has been pushed into his locker, shoved into a wall, punched in the stomach, chased, had books taken, and had his shoes hidden. He testified one student in particular repeatedly picks on Kiley, then Kiley reacts, and both students get into trouble. He testified several other students also pick on Kiley.

Mr. Auten testified they filed for open enrollment because they got tired of dealing with the problems, and have not been able to work things out. Both Mr. Auten and Secondary School Principal Haidsiak testified that they were repeatedly in contact either by telephone or in person regarding Kiley. However, Mr. Haidsiak's view of the situation is somewhat different from Mr. Auten's. Mr. Haidsiak testified that Kiley is picked on sometimes, particularly by one student. However, he also testified that sometimes Kiley is the initiator of the conflicts, he overreacts, and most of the situations involve joint culpability. It was also clear from testimony of both Mr. Auten and Mr. Haidsiak that Kiley has not always told his father all of the details of what happened, particularly when he began the conflict. Mr. Haidsiak also testified that the student who was the main problem for Kiley during the 1996-97 school year moved out of the District.

Superintendent Busch testified Kiley's problems have been going on longer than two years, and involved problems with adults in authority as well as peer problems. He testified regarding an incident on the bus four years ago when Kiley had refused to obey a bus driver, the situation had escalated, Kiley became out of control, and Mr. Busch had to physically remove him from the bus. Mr. Busch testified that problems with peers are Kiley's major problem. Mr. Haidsiak testified that when Kiley has had a problem with another student, he sometimes has the two students sit together at a table in his office and cool down, and this has seemed to solve the problem. However, he testified that this semester Kiley quit cooperating and trying to work with him. He testified Kiley stopped talking with him about his side of the conflicts.

The Autens and the District have worked together to try to help Kiley deal with his own behavior, and how to avoid certain situations. There is a student/teacher assistance team which meets weekly to identify problems such as this one. Kiley has talked with the school psychologist and the guidance counselor. The District brought in experts who met with the students in groups for several days. They worked on harassment concerns and how to respond. Mr. Auten and Mr. Haidsiak have talked with

Kiley about ignoring other students if they say something upsetting to Kiley, how to blow off steam, and to avoid certain areas of the school which seem to cause conflict. Unfortunately, Kiley has not always followed the advice given him. Mr. Haidsiak testified he is hopeful that the student who has been the main problem for Kiley will be attending a program in another school next year, and will therefore be separated from Kiley. He also testified that this student was suspended and received home-bound instruction out of the building for awhile. Mr. Haidsiak has imposed discipline on both Kiley and other students as a result of their confrontations.

Mr. Auten testified he would like to have Kiley stay at one school and finish, but things have become impossible. He testified he does not know whether transfer to another district would help, but he is willing to take the chance so Kiley could have a fresh start. The Autens filed an application for open enrollment for Kiley on April 8, 1998. They did not know there was an application deadline of January 1st. They did not file earlier because they were hoping the situation would improve, and that the students would mature and get along better. The Board denied the Auten's application at the meeting on April 27, 1998, because the application was filed past the January 1st deadline. In his April 28th letter to the Autens telling them of the denial, Superintendent Busch told the Autens that the Board might reconsider its denial if they received some documentation or recommendation that it would be in Kiley's best interest to change schools. Mr. Busch testified this documentation could be a number of things, such as a letter from a psychologist, psychiatrist, or medical doctor. The Autens declined to take this opportunity. Mr. Auten testified that Kiley is not seeing a psychologist, and he believes the Board should have looked at Kiley's school records for this documentation.

The District does not have a written open enrollment policy that requires parents to file applications for open enrollment by January 1. However, the Board has had a practice of denying late-filed open enrollment applications, and it has consistently followed this practice. The only exceptions have been for students who moved into the District and wanted to continue attending their previous school. Other than these, the Board has always denied late-filed open enrollment applications. Mr. Busch has been superintendent of the District for twelve years, and the Board has always followed the deadlines set in the code for open enrollment applications¹.

The District publishes notice of the open enrollment deadlines each year. In 1997, the notice was published in the school newsletter in August. The newsletter was mailed to every household having students in the District, and was also given to all new students who enrolled in the District when they enrolled.

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 1st 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 Autens did not know there was an application deadline of January 1st. Mr. Auten wants to open enroll his son because he is having academic and peer-related problems, as discussed above in the findings of fact. While these may be good reasons for wanting to open enroll Kiley, 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 Appellant's 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 is not a harassment case like Van Bommel. In re Melissa J. Van Bommel, 14 D.o.E. App. Dec. 281 (1997). Although Kiley has been harassed on some occasions, the evidence showed that he has jointly participated in the conflict in most cases, and has initiated it on some occasions. In addition, the evidence is far from clear that transfer to another district will make any difference. On the contrary, the evidence showed that this district has made considerable effort to work with Kiley and his parents to solve these problems. Kiley himself must also be willing to work. We recommend that the District contact the AEA regarding an evaluation of Kiley for provision of special education or other services.

The legislature put a deadline of January 1st into the open enrollment law. Iowa Code §282.18(2)(1997). The District has a practice of requiring parents to file their applications by the deadline, and has consistently followed this practice. 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 August 1997 school newsletter, which was sent to all families with students in the District. The departmental rule requires that notice of the deadline must be given to all parents by September 30th 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 application.

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 Villisca Community Schools made on April 27, 1998, which denied the Appellant's late-filed request for open enrollment for his son 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