

**IOWA STATE DEPARTMENT
OF EDUCATION
(Cite as 16 D.o.E. App. Dec. 81)**

In re Catherine Nibe, :

Donovan & Rebecca Nibe, :
Appellants,

v. : DECISION

Northeast Hamilton Community :
School District,
Appellee. : [Docket # 3995]

This case was heard telephonically on June 3, 1998, before a hearing panel comprising Mr. Steve Fey, Bureau of Administration/School Improvement Services; Mr. Don Smith, Bureau of Technical & Vocational Education; and Amy Christensen, designated administrative law judge, presiding. Appellant, Mrs. Nibe was present telephonically and was unrepresented by counsel. Mr. Nibe was not present. The Appellee, Northeast Hamilton Community School District [hereinafter, "the District"], was present telephonically in the persons of Mr. Pat Hocking, K-12 Principal, and Ms. Janet Greufe, Board Secretary. 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 April 8, 1998, which denied their request for open enrollment for their daughter. The basis of the Board's decision was that the application was late.

**I.
FINDINGS OF FACT**

The Nibes live in Blairsburg in the Northeast Hamilton Community School District. Catherine is in eighth grade. Mrs. Nibe works for the District, but is leaving at the end of the 1997-98 school year. While Mrs. Nibe worked for the District, Mr. and Mrs. Nibe would not let Catherine open enroll out of the District. However, now that Mrs. Nibe will no longer work there, the Nibes will allow Catherine to open enroll if she

wishes. Catherine and her parents want her to open enroll to South Hamilton for a number of reasons. Since Mrs. Nibe is leaving the District, Catherine feels some discomfort at remaining in the District. The Nibes would like Catherine to attend all four years of high school at the same school, and not have to transition between ninth and tenth grade. This is so Catherine could more easily make friends, be involved in activities, and meet graduation requirements. Mrs. Nibe testified the South Hamilton District is on a block schedule, which is different than Northeast Hamilton, and could mean that Catherine would have to take courses at Northeast Hamilton not required by South Hamilton. In addition, Catherine would be ineligible to play volleyball for 90 days if she transferred between ninth and tenth grade, and Mrs. Nibe testified this would not be a problem if she transferred at the beginning of ninth grade.¹

The Nibes filed an application for open enrollment for Catherine on April 1, 1998. Mrs. Nibe knew the application was late at the time she filed it. However, Mrs. Nibe did not find out that she was leaving the District until March of 1998. Therefore, the Nibes could not have filed their application for open enrollment by the January 1st deadline. The Board denied the Nibe's application at the meeting on April 8, 1998, because the application was filed past the January 1st deadline.

The District has a written open enrollment policy, Policy No. 506.1, which requires parents to file applications for open enrollment by January 1st. Mr. Hocking has been the principal of the District for four years, and has attended every Board meeting during that time. The Board has never approved any late-filed applications during this four-year period. Mrs. Nibe testified that during the previous administration, in about 1991, the Board allowed a student who was being harassed to exit the District in the middle of the year. She knew of no other exceptions. Mr. Hocking had no knowledge of this, since it occurred before he came to the District.

The District publishes notice of the open enrollment deadlines each year. Notice is published in the Student Handbook, which is given to all students and parents at the beginning of the school year.

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).

¹ The Iowa Department of Education rules at 281 IAC 36.15(4) and Iowa Code §282.18(13)(1997) provide that students who open enroll in grades ten through twelve are ineligible to participate in athletic competitions and contests for ninety days.

At the time the open enrollment law was written, the legislature recognized that certain events would prevent a parent from meeting the January 1st 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 1st 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 1st 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).

Mr. and Mrs. Nibe want to open enroll their daughter for a number of reasons, as discussed above in the findings of fact. While these may be good reasons for wanting to open enroll Catherine, 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).

The legislature put a deadline of January 1st into the open enrollment law. Iowa Code §282.18(2)(1997). The District has an open enrollment policy which requires filing by the deadline, and has consistently followed the policy. The exception for a student who was harassed was made years ago by a previous Board, and the reason for the exception was clear to Mrs. Nibe, so presumably it was clearly stated at the Board meeting at the time the exception was made. 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 evidence at the hearing showed that the District followed the procedures set out in its open enrollment policy, and those procedures conform to state law.

The District published notice of the open enrollment deadlines in the Student Handbook given to all students and parents at the beginning of the school year. 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 the Northeast Hamilton Community School District made on April 8, 1998, which denied the Appellants' late-filed request for open enrollment for their daughter 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