

**IOWA STATE DEPARTMENT
OF EDUCATION
(Cite as 16 D.o.E. App. Dec. 49)**

In re Shelby, Anthony, Brandon, and Davey Stevenson, Brittany and Scott Brown, Melissa Bush, Therese, Mark, and Anthony Schneider, and Timothy Smith,	:	
	:	
David and Bonnie Stevenson,	:	
Janet and Douglas Brown,	:	
Gayla Bush, Jack and Julie Foley, and Teresa Smith,	:	
Appellants,	:	
	:	
v.	:	DECISION
	:	
River Valley Community School District,	:	
Appellee.	:	[Docket #s 3981, 3982, 3986, 3987, & 3989]

This case is a consolidation of five appeals, and was heard telephonically on May 7, 1998, before a hearing panel comprising Ms. Mary Jo Bruett, Bureau of Planning, Research & Evaluation; Ms. Geri Sudtelgte, Bureau of Administration/School Improvement Services; and Amy Christensen, designated administrative law judge, presiding. The following Appellants were present telephonically and were unrepresented by counsel: Mr. David and Mrs. Bonnie Stevenson, Mrs. Janet and Mr. Douglas Brown, Mrs. Gayla Bush, Mr. Jack Foley, and Ms. Teresa Smith. The Appellee, River Valley Community School District [hereinafter, “the District”], was present telephonically in the persons of Mr. Ronald Pilgrim, Superintendent; Ms. Cheryl Spear, Elementary School Principal; Mrs. Julie DeStigter, Middle School Principal; and Mr. Dean Schnoes, High 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 Appellants seek reversal of decisions of the Board of Directors [hereinafter, "the Board"] of the District made on March 16 and April 20, 1998, which denied their requests for open enrollment for their children. The basis of the Board's decisions was that the applications were late.

I. FINDINGS OF FACT

All of the Appellants live in the town of Quimby, Iowa with their children. Quimby is in the River Valley Community School District. Until January 1998, the District had four attendance centers. The two elementary schools were in Cushing and Washta. The middle school was in Quimby. The high school was in Correctionville. On approximately December 26, 1997, while the District was on Christmas break, there was a small fire at the Quimby attendance center. The first fire marshall's inspection of the Quimby building was done on January 20, 1998. The District received the inspector's report on January 22nd. The report stated that the school's wiring was unsafe, and presented "an imminent hazard to the students of the school." As a result of the inspection report, and due to insurance requirements and the advice of the District's attorney, the District decided to temporarily close the Quimby center. All elementary students from Washta were moved to the Cushing building. All middle school students, who had been attending at Quimby, were moved to the Washta building. The students changed buildings in late January. High school students did not change their attendance center. After a second inspection, the District received a second report from the State Fire Marshall's office dated February 4, 1998. After meeting with representatives of the Fire Marshall's office, and learning the cost to repair the Quimby building, the District decided to permanently close the Quimby building.

Shelby, Anthony, Brandon, and Davey Stevenson

Shelby Stevenson is in kindergarten, Anthony is in third grade, Brandon is in sixth grade, and Davey is a freshman in high school. Shelby and Anthony attended school in Washta. As a result of the changes in attendance centers, the Stevensons are home schooling Shelby and Anthony. The Stevensons filed applications for open enrollment for their two youngest sons on February 26, 1998. They filed an application for Brandon on March 10, 1998. They filed an application for Davey on April 6, 1998. The Stevensons would like all of their children to attend school in the Galva-Holstein District. They believe Galva-Holstein offers them a stable alternative and the best education possible for their family, and the children support their decision to seek open enrollment.

Mrs. Stevenson disagrees with the decisions made by the District after the fire, and she testified they made bad choices in the way they handled the situation. She testified Western Iowa Tech offered the District classrooms and materials for the middle

school students, so the elementary students would not have been affected. She testified that although Superintendent Pilgrim said the offer was made after the decision to move the students had already been made by the District, she faults the Superintendent for not reconsidering his decision. The Stevensons believe the District should have kept each class intact and with its original teacher at the new building, so there would not be such upheaval for the students. Mrs. Stevenson testified this created instability during the students' academic year, and created overcrowded conditions. She disputes the safety reason the Board gave for closing the Quimby building, stating that other buildings in the District also have safety problems. She thinks the District should have had a bond issue to raise money to fix the Quimby building and the other buildings. She testified the District's reason to close the Quimby building was financial, not safety. She testified the District should have taken the parents' wishes into consideration.

Mrs. Stevenson testified that her son Anthony has had a particularly difficult time adjusting to the move. He was in a class with 13 students in Washta. She testified he was a happy-go-lucky student with good grades before the move. She testified he finds security in routine. In Cushing, Mrs. Stevenson testified he is in a third grade class of effectively 50 students, with only a wooden curtain between two classes, and the curtain is open three times a day. Some of the books were not the same, and some students were in different places in the curricula, and she does not believe it was good for the children to put them all together. After the move, Mrs. Stevenson testified Anthony became a very weepy, insecure child, and they had to fight him to go to school. His teacher from Washtau was no longer his homeroom teacher at Cushing. Mrs. Stevenson testified this teacher called her to tell her Anthony was feeling anxious and nauseous once he got to school. She testified Anthony was on the verge of tears whenever he was at school. When she asked him what was the matter, he told her he felt like he had lost everything and broke into tears. Mrs. Stevenson testified that she discussed this with Anthony's Washta teacher, and the two agreed he was a bundle of nerves. Mrs. Stevenson then called the school's principal, and she testified the principal's response was "Attitude comes from home." From that day, Mrs. Stevenson has been home schooling Anthony and Shelby, and they are happy and doing very well with their schoolwork. In their affidavit, the Stevensons state that Brandon has reduced educational opportunities as a result of the move. They state he no longer has access to science and home economics labs and the Internet. They also object to the fact that Brandon does not have a locker, and has to carry all his books, which weigh about twenty-one pounds.

Mrs. Stevenson is upset that the Board did not take her concerns into consideration when the Board made its decision. She testified all the applications were considered together in one motion. The River Valley District denied the applications for the youngest three boys at the Board meeting on March 16, 1998. The Stevensons did not file an application for Davey originally because he is a high school student and therefore not directly affected by the changes. However, in their affidavit, the Stevensons state that

Davey's education had suffered due to hostilities shown to families who chose to open enroll, and to residents of the town of Quimby. In addition, they state there are classes available at Galva-Holstein which are not available at River Valley. Therefore, they applied for open enrollment for Davey as well. The District denied the application for Davey at the Board meeting on April 20, 1998. Mrs. Stevenson testified the Board's decisions to deny open enrollment were made for financial reasons, and that the District denies there are any problems.

In re Brittany and Scott Brown

Brittany is a seventh grade student, and Scott is in the second grade. Scott exhibited "class clown" type behavior. Before the elementary students were moved to Cushing, Scott's second grade teacher used a weekly evaluation sheet to work with Scott to stop this behavior. Mrs. Brown testified the teacher's use of the sheet was very effective, and Scott was learning to stay on task, not interrupt other students, and not engage in the silly behavior. Scott has the same teacher in Cushing that he had in Washta. However, after the move, Mrs. Brown testified the teacher no longer has time to use the sheet and work with Scott because of the number of students in the class, and he has reverted to his old behavior. The Browns also believe it is unacceptable that Scott will be in a third grade classroom next year with almost 50 students. They are also unhappy because Scott's bus ride has almost doubled in time, and if he wants to eat breakfast at school, he must miss the first 10-15 minutes of class each day.

The Browns testified that Brittany has lost enthusiasm for school, and is bored and does not like attending in the Washta building. They do not like the fact she does not have a locker. They also testified to the lost access to biology and home economics labs and the Internet. They are upset that Brittany was asked by a janitor to help move a computer monitor, and slipped on some steps, sprained her ankle, and ruined the monitor. Mrs. Brown testified this is one example of the bad judgement exercised by the District.

Mrs. Brown testified that the District's motivation for closing the Quimby school is financial and political, not safety. She testified that students from Quimby are treated badly on the playground and by teachers. She testified they have lost all faith in the integrity and judgement of the District administration, and cited a number of examples of how they are unhappy. Mr. Brown testified the District does not care about the learning of the students, and only cares about its financial position. Mr. Brown testified it seems to him that the District closed the Quimby school in retaliation for Quimby residents not supporting a bond issue. Mr. Brown testified that once they started looking for alternatives, they discovered there were many more opportunities and classes for their children in the Cherokee District, so they would like to open enroll their children to Cherokee. Mrs. Brown testified both children's schools are some distance away from

their home, and it would be a much shorter and easier for her to transport them to school in Cherokee. In addition, the Browns have purchased a lot in Cherokee, and plan to build a home there.¹

The Browns filed for open enrollment on February 27, 1998. The applications were denied at the March 16, 1998 Board meeting.

In re Melissa Bush

Melissa is a seventh grade student. She is a good student, and somewhat shy. Mrs. Bush testified Melissa does not get along well with some of the students from Correctionville, and has felt left out socially. She also testified that Melissa is not being challenged at Washta, and they want her to attend school in Cherokee. She testified Melissa is excited about the educational opportunities available at Cherokee, which are better than those offered in Washta. Mr. Bush works in Cherokee, which would be helpful if Melissa needed to be picked up, because Mrs. Bush runs a daycare, and it is hard for her to leave. Mrs. Bush testified she agrees with the concerns expressed by the other parents. She believes the open enrollment deadline should have been extended, since the changes were made after the deadline had already passed. While she understands the District needs to be concerned with finances, she does not believe it should be done at the cost of her child.

The Bushes filed their application for open enrollment on March 4, 1998. The application was denied at the Board meeting on March 16, 1998. In her affidavit, Mrs. Bush states that she does not believe the Board read her application, and does not feel she received due process from the Board.

In re Therese, Mark, and Anthony Schneider

Therese is in tenth grade, Mark is in eighth grade, and Anthony is in fifth grade. Mr. Foley is the children's stepfather. Mr. Foley testified that last fall, the children wanted him to pay tuition so they could attend school in Cherokee. He refused, unless they could give him a good reason. He told Therese that if she obtained a job in Cherokee, he would try to pay for her to leave. Therese's birthday is in January, and she turned 16. She then got a job in Cherokee. Mr. Foley's application was late because he did not want Therese to attend school in Cherokee unless she also got a job there and enjoyed it. Mr. Foley testified it makes sense for the children to attend school in Cherokee so they can save an hour per day and driving distances by attending school and working in the same town. In his affidavit, Mr. Foley stated there are part time jobs available in Cherokee that are not available in the towns in the District. Therese has

¹ When the Browns complete their home in Cherokee and move, their children will be able to attend school in Cherokee as residents of the district.

friends at work. Mr. Foley testified there are many more classes available in Cherokee than in River Valley. Mark will be starting to work in Cherokee soon, and the family would like to keep all the children together in the same district. Mr. and Mrs. Foley believe it would be a better situation all the way around if the children were able to attend school in Cherokee rather than River Valley.

Therefore, the Foleys applied for open enrollment for their children on March 14, 1998. The District denied the applications at the Board meeting on March 16, 1998.

In re Timothy Smith

Timothy Smith is in the fifth grade. Ms. Smith testified that since the move to Cushing, Tim hates school, and she has to fight with him every day to make him go. He had something stolen from him in the Cushing building. Ms. Smith testified she spoke to Ms. Spear and Tim about this, but Tim told her nothing was done. Ms. Smith is unhappy the students have no lockers in Cushing. She testified Tim plays baseball for a team 45 miles away from home, but he won't participate in sports in River Valley. She testified he had no opportunity to play basketball in River Valley because there was no coach. In her affidavit, Ms. Smith states there are more sports offered in the Cherokee District. She testified Tim was harassed at school in November of 1997 after the last bond issue failed. She also testified his grades are not what they should be. She testified it did not help the children's education when they were put together, because the curriculum was different, and they had to backtrack for some students, and some were ahead of others. She is not happy with the education Tim is receiving in Cushing, and wants to do what is best for him.

Ms. Smith filed for open enrollment on March 16, 1998. The Board denied the application at the meeting on the same date.

The District

The elementary school principal, Ms. Cheryl Spear, testified that although there are now almost 50 third graders, there are three teachers, so the student/teacher ratio has not changed. There are two sections of third graders of 25 students each. Ms. Spear testified the large room is divided for most of the day by an accordion-style acoustical wall. The partition is only open during free choice time, at noon for study hall, and at the end of the day for study hall. Ms. Spear testified that the largest number of students in any grade level is 49. Students are divided into two classrooms, and in all but fourth grade, there are three teachers for each grade level. There are only two teachers for fourth grade, because there are only 40 fourth-grade students. The teachers for each grade level teach as a team, so that when two teachers are leading two classrooms, the third teacher is available to observe and help students individually.

The District has a written open enrollment policy, Policy No. 501.14, which requires parents to file applications for open enrollment by January 1st. The policy was adopted December 17, 1996. Mr. Pilgrim has been the superintendent of the District since July 1996. Since then, the Board has never approved any late-filed applications. The only applications filed after January 1st which were approved were applications from parents of children who will be kindergarten students.

The District publishes notice of the open enrollment deadlines each year. In 1997, the notice was published in the school newsletter in August or September. Notice is also published in newspapers in each of the four communities served by the District during the summer.

Superintendent Pilgrim testified the applications were denied because they were filed past the January 1, 1998 deadline.

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 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).

The parents are understandably upset because the decision to close the Quimby school and move the students was made after the January 1st deadline, so they could not have filed by the deadline. Therefore, some of the parents argue that the changes in the District constitute good cause, because one of the definitions of good cause contained in the statute is a change in the status of the district in ways listed above. Iowa Code §282.18(16)(1997). However, the State Department of Education rules specifically state that good cause does not include a change in attendance centers within the district. When discussing good cause, 281 Iowa Administrative Code 17.4(3) provides: "A similar set of circumstances related to change in residence of the pupil or change in status of the resident district shall not include: a. Actions of a board of education in the designation of attendance centers within a school corporation and in the assignment of pupils to such centers as provided by Iowa Code section 279.11." Iowa Code section 279.11 states that the Board of each District will determine the number of schools, divide the District into wards or other divisions, and determine the particular school where each student will attend. Furthermore, the State Board has previously held that closing a building and restructuring of middle and elementary grades was not good cause. *In re Peter and Mike Caspers, et al.*, 8 D.o.E. App. Dec. 115(1990). Last year, the State Board decided that a Board's decision to change grades held in attendance centers within the district and reassign students to other schools in the district was not good cause for a late filed application. *In re Clark Daniel Campos*, 14 D.o.E. App. Dec. 301(1997).

This case falls squarely within 281 IAC 17.4(3) and the prior cases, which specifically provide that closure of an attendance center, and redesignation of attendance centers within the district and assignment of pupils to those attendance centers is not good cause. *In re Clark Daniel Campos*, 14 D.o.E. App. Dec. 301 (1997); *In re Peter and Mike Caspers, et al.*, 8 D.o.E. App. Dec. 115 (1990). Furthermore, the statute and rules

provide that permanent closure of a nonpublic school is good cause, not closure of a public school. Iowa Code section 282.18(16)(1997); 281 IAC 17.4; *Campos, supra; Caspers, supra*. Closure of the Quimby building and reassignment of students to different attendance centers did not provide the Appellants with good cause for filing their applications after the January 1st deadline.

The District published notice of the open enrollment deadlines in the school newsletter in August or September, and in a newspaper in each of the four communities within 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.

Many of the Appellants want to open enroll their children because they believe the children are having serious problems adjusting to the change in attendance centers. They testified to the changes in attitude toward school for the worse since their children were moved. However, adjustment problems such as those testified to are not good cause as that term is defined by the legislature and State Board rules or case law. *In re Austin Wahlers*, 15 D.o.E. App. Dec. 333(1998). Some parents also want to open enroll their children because they believe there are more classes and better educational opportunities for their children in another district. It would be easier for some families to have their children attend school in Cherokee because of transportation distances and time. Some parents believe there are serious problems in the District, such as large class sizes and fewer educational opportunities, as a result of the close of the Quimby building. While these may be good reasons for wanting to open enroll the 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. We are very sympathetic to the adjustment problems experienced by the children, and realize that change is difficult for some students and their parents. We also admire parents who care about their children's education enough to want them to have the best educational opportunities available. We are also sympathetic to the difficulties experienced by busy families with conflicting schedules. However, the reasons given for not filing the applications 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).

The Appellants would like us to exercise discretion and allow their children to open enroll to Cherokee or Galva-Holstein, which they believe would be in their children's best interest, pursuant to Iowa Code section 282.18(18)(1997). The State Board has been reluctant to exercise its subsection (18) authority absent extraordinary circumstances. *In re Crysta Fournier*, 13 D.o.E. App. Dec. 106(1996); *In re Paul Farmer*, 10 D.o.E. App. Dec. 299(1993). This case is not one which is of such unique proportions that justice and fairness require the State Board to overlook the regular statutory procedures. *Wahlers, supra; Campos, supra; Fournier, supra*; Iowa Code §282.18(18)(1997). This is particularly true when the main reason given for the late filing by all parents other than Mr. Foley is specifically stated not to be good cause in the department's rules.

Some of the parents testified that their children or other students in the District were being harassed by other students or teachers. The State Board developed guidelines which it uses to decide when to exercise its subsection (18) authority in harassment cases in *In re Melissa J. Van Bommel*, 14 D.o.E. App. Dec. 281(1997). There is no evidence that any of the situations in this case meet the *Van Bommel* criteria.

Some of the Appellants argue that the District's true motivation in denying their application is financial. They believe that their children's education and needs are being overlooked by the District because the District cannot afford to lose this many students through open enrollment. This does not provide a reason to overturn the Board's decision. 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. 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. While there is obviously a financial benefit to the District if the Appellants' children stay, 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. Therefore, the financial benefit to the District does not mean that the Board's decision to act according to its open enrollment policy should be overturned.

We see no error in the decisions of the Board to deny open enrollment. The Board's decisions to deny open enrollment were 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 decisions of the Board of Directors of the River Valley School District made on March 16 and April 20, 1998, which denied the Appellants' late-filed requests for open enrollment for their children for the 1998-99 school year, are 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