

**IOWA STATE DEPARTMENT
OF EDUCATION
(Cite as 15 D.o.E. App. Dec. 333)**

In re Austin Wahlers :

Rudolph & Sandra Wahlers, :
Appellants,

v. : DECISION

River Valley Community :
School District,
Appellee. :

[Admin. Doc. #3973]

This case was heard telephonically on April 8, 1998, before a hearing panel comprising Ms. Sharon Slezak, Office of the Director; Mr. Vic Lundy, Bureau of Technical & Vocational Education; and Amy Christensen, designated administrative law judge, presiding. The Appellants, Mr. and Mrs. Wahlers, were present telephonically and were unrepresented by counsel. The Appellee, River Valley Community School District [hereinafter, "the District"], was present telephonically in the persons of Dr. Ronald Pilgrim, Superintendent; Ms. Mary Ellen Fox, teacher's aide and secretary; Ms. Cheryl Spear, Elementary School Principal; Ms. Jane Van Beek, third grade teacher; and Ms. Sherri Jepsen, resource teacher. 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 March 16, 1998, which denied their request for open enrollment for their son, Austin.

**I.
FINDINGS OF FACT**

The Wahlers live in the town of Quimby, Iowa with their son, Austin. Austin is in the third grade. He is a special education student. Austin attended school in the District's Washta building until the end of January, 1998. He was then moved to the District's Cushing building. The Wahlers filed an open enrollment application for him to attend school in the Cherokee District on March 3, 1998.

The Wahlers would like Austin to attend school in Cherokee beginning in the 1998-99 school year because of the change in attendance centers in the District, and Austin's reaction to the change. The River Valley District had four attendance centers. During Christmas break, there was a small fire at the Quimby attendance center. As a result of an inspection and report by the fire marshal, the cost of repairs, and due to insurance requirements, the District decided to close the Quimby center. All Washta elementary students were moved to the Cushing building. All middle school students who had been attending at Quimby were moved to the Washta building. The students moved from Washta to Cushing on January 30, 1998.

The Wahlers complain that there were small classes at the Washta building, and there are now 50 students in the third grade. They do not like the third grade room, which is one large room with a partition which is closed part of the day. They testified that Austin did not like changing to the Cushing center from the beginning. They testified his regular teacher from Washta only teaches him one class now. It was very disturbing to Austin to have to deal with new teachers. The Wahlers testified they talked with teachers or staff about the problem, but school staff told them they saw no problems at school. However, the Wahlers testified Austin cried every morning and begged them not to make him go to school. He began to be physically ill on school mornings. They testified he cried at night. The Wahlers decided to open enroll Austin to the Cherokee District.

Soon after they filed for open enrollment, on March 5, 1998, the Wahlers went to school to talk with school officials to try to find a solution. They met with Ms. Sherri Jepsen, Austin's resource teacher, and other members of the staff who knew Austin. The meeting took place in the principal's office. At first, staff met only with Mr. and Mrs. Wahlers. They then decided to have Austin come to the office with the hope he would let them know what the problem was. Ms. Jepsen asked Austin questions. She testified that when she asked Austin why he cried before and after school, he had a blank look as though he didn't know what she was talking about. When she asked him certain questions, he did not answer. He said there was a problem on the bus with a certain girl, but he could not give a name or describe her. Austin cried in the office, and his parents calmed him down. Ms. Jepsen believes that Austin was upset primarily because he could tell his parents were upset.

Once the meeting was over, Mr. and Mrs. Wahler walked with Austin back to the resource room. Once it was clear Mr. and Mrs. Wahlers were leaving, Austin completely broke down, held onto his mother, and did not want to go back to class. Since he was hysterically crying, his parents took him home. The next morning, Austin cried and asked not to be sent to school. The Wahlers then began home schooling, and Austin has not been back to school.

Mrs. Wahler testified that since she has been home schooling Austin, he has been fine, and is doing his schoolwork well. In consultation with the AEA, since there is such a short time left in the school year, they have decided to forego special education services for the remainder of the year. Although Mrs. Wahler testified they will home school Austin rather than sending him to River Valley, they believe it would be better for him to have the social interaction of going to school. Therefore, they would like to open enroll Austin to the Cherokee District.

River Valley staff uniformly testified they were very surprised when Austin broke down so completely and did not want to return to school. They testified he seemed to be adjusting to the move very well. They testified that Austin has some problems, but these were present when he was at Washta as well. They testified he seemed to enjoy meeting some of the new children, and was doing fine completing his work. They testified he did not cry at school like he did at home, and many times Ms. Jepsen saw him smiling and laughing. Ms. Jepsen did not see any changes in his behavior as a result of the move. Ms. Fox, who is on the bus with Austin, testified she never saw anyone teasing Austin on the bus.

District staff testified while there are now 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. They testified the large room is divided for most of the day. The partition is only open during free choice time, at noon for study hall, and at the end of the day for study hall. Staff disputed that the Wahlers had discussed problems with them many times. Ms. Spear testified the Wahlers came to school once during the week of February 2nd, later in February for conferences, and then on March 5th. She testified that because Austin never returned to school, they have not had the opportunity to work with Austin's teachers and the counselor to try to solve the problem, and she wished they had had that opportunity.

It is not surprising to the panel that Austin presented a different demeanor at home and at school. Therefore, we are assuming that all of the testimony regarding Austin's problems at home is true, and all of the testimony regarding Austin's adjustment at school is also true.

The District has a written open enrollment policy 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 Wahlers testified the Board approved a late-filed application in February. Mr. Pilgrim testified the Board approved an application filed after January 1st in February, and one in March. However, both of those applications were for kindergarten students, so they were not late.

The District publishes notice of the open enrollment deadlines each year during the fall. The notice is published in the school newsletter and in newspapers in each of the four communities served by the District.

At its meeting on March 16, 1998, the Board of the District denied the Wahlers' application for open enrollment on the ground it was filed after the January 1st deadline. The Wahlers then filed this appeal. They argue that their son's education has taken a back seat to problems in the District, and that the Board's reason for denying the application was financial.

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).

Although the State Board of Education has rulemaking authority under the open enrollment law, the rules do not expand the types of events that constitute "good cause". They do however, state that good cause does not include a change in attendance centers within the district. 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.)

This case falls squarely within 281 IAC 17.4(3), which specifically provides that designation 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*. The Wahlers did not have good cause for filing their application after the January 1st deadline.

Each fall, the District publishes notice of the open enrollment deadlines in a school newsletter, 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). However, even if the District published notice after September 30th, since it published notice sometime during the fall, we find that the District substantially complied with the requirement of the rule. The September 30th deadline was placed in the rule when the statutory deadline for filing applications was October 30th. Between 1995 and 1997, the statutory deadline was changed from October 30th to January 1st. *Compare* Iowa Code 282.18(2)(1995) with Iowa Code 282.18(2)(1997). The rule has not been changed to reflect this change in statutory deadline. The purpose of the rule is to give parents adequate notice of the deadline so

they may timely file applications. The District published notice in the fall, prior to the January 1st deadline. Therefore, this was substantial compliance with the requirement of the rule.

The Wahlers want to open enroll Austin because they believe he is having serious problems adjusting to the change in attendance centers. 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. 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 recently 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 Wahlers' reasons for wanting open enrollment. We are very sympathetic to the difficulties experienced by Austin, although we wish the Wahlers would have worked more closely with school officials to try to find the cause for Austin's problems. 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).

The Wahlers would like us to exercise discretion and allow Austin to open enroll to Cherokee, which they believe would be in Austin'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. *Campos, supra; Fournier, supra*; Iowa Code §282.18(18)(1997). This is particularly true when the main reason given for the late filing is specifically stated not to be good cause in the department's rules.

The Wahlers argue that the District's true motivation in denying their application is financial. This does not provide a reason to overturn the Board's decision. 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 application is 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 Austin stays, 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 decision of the Board of the District. The Board's decision 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 River Valley School District made on March 16, 1998, which denied the Wahlers' late-filed request for open enrollment for Austin to attend school in Cherokee 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