

**IOWA STATE BOARD
OF EDUCATION
(Cite as 15 D.o.E. App. Dec. 169)**

In re Alida Congdon	:	
Susan Congdon, Appellant,	:	
v.	:	DECISION
Ames Community School District, Appellee.	:	
	:	[Admin. Doc. #3933]

This case was heard telephonically on January 22, 1998, before a hearing panel comprising Mr. Steve Fey, Bureau of Administration, Instruction, and School Improvement; Ms. Mary Jo Bruett, Bureau of Planning, Research & Evaluation; and Amy Christensen, J.D., designated administrative law judge, presiding. The Appellant, Ms. Susan Congdon, was present telephonically and was unrepresented by counsel. The Appellee, Ames Community School District (hereinafter, "the District"), was present telephonically in the persons of Dr. Richard Johns, Superintendent, Dr. Ralph Farrar, Deputy Superintendent, and Mr. Joe Stratton, Board Secretary & Business Manager of the District. The District was represented by Mr. Ronald Peeler.

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 State Board 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 November 17, 1997, which denied her request for continued open enrollment for her daughter, Alida, into middle school, due to insufficient classroom space.

**I.
FINDINGS OF FACT**

Ms. Congdon and her daughter, Alida, live in Ames, but their home is in the Gilbert School District. Alida is in the sixth grade.

In 1991, Ms Congdon applied for open enrollment so that Alida could attend school in the Ames District. This application was approved, but only for grades K-6, which are elementary grades in the Ames District. At the time this open enrollment request was granted, Ms. Congdon was told orally and by letter that the application would not be approved for 12 years as she had requested “because we have insufficient classroom space for open enrollment purposes at the middle school.” She was also told that if she wanted to apply for open enrollment for Alida for seventh grade and years following, “the decision on the application will be made based on enrollment information available at that time.” (letter dated March 6, 1991 from the Ames District to Ms. Congdon)

On September 10, 1997, the Ames District sent Ms. Congdon a letter. In the letter, the District reminded her that Alida’s open enrollment application would expire at the end of the 1997-98 school year. The letter stated that the Ames District had declared there to be insufficient classroom space for grades 7 through 12, and that the District therefore would not allow any open enrollment requests into the middle school and high school. The letter also stated that the declaration of insufficient classroom space is made on a yearly basis, and would be decided by the Board at its November 17, 1997 meeting. The letter informed Ms. Congdon that she needed to apply for open enrollment by January 1, 1998, if she wanted to continue Alida’s open enrollment. However, the letter additionally stated that the District could not tell her at that time whether the application would be granted, because the decision depended on the availability of classroom space at that time.

Alida has attended all grades in the Ames District. She and her mother would like her to continue in the Ames District for middle school and high school. The family conducts all of its activities in Ames, since they live in Ames. Ms. Congdon works at the ISU library. Alida participates in a number of extracurricular activities in Ames, and uses the Ames bus system to attend. Ms. Congdon therefore applied for open enrollment for Alida. She applied by sending a letter to the Gilbert District that was received on October 8, 1997. Although no one at the hearing had a record of the Gilbert District’s approval of the open enrollment request, and the Gilbert District did not notify Ms. Congdon of its approval, the parties assumed the Gilbert District had approved the application, since it was on the agenda for the Ames School Board meeting on November 17, 1997. We will also assume the application was approved, since it was submitted timely and there was no reason for the Gilbert District to deny it.

The Ames District has a written policy that defines insufficient classroom space. Each year since November 1990, the Board of the District has declared there is insufficient classroom space at the middle and high school levels. The Board has denied all requests for open enrollment into the middle school and high school since that date, with only two exceptions. Once, the District was ordered by a Court to allow a student to

continue. The District also might consider allowing a younger sibling to continue if he or she had an older sibling already attending middle or high school, although it denied an application similar to this once in the past.

The District allows open enrollment into the elementary grades because it wants to maximize open enrollment to the extent possible. There are between three and five students open enrolled into the District in each elementary grade. Each of the parents has been notified of the insufficient classroom space at the secondary level. The District receives many calls from parents asking about open enrollment into the District. In most cases, when told the secondary schools are closed to open enrollment, the parents do not file applications for the elementary grades. If students were allowed to continue their open enrollment into the secondary grades, Dr. Johns and Dr. Farrar are concerned about the cumulative impact of all the elementary students currently open enrolled once they enter junior high and high school. They are also concerned that many more parents would apply for open enrollment in the elementary grades if they know their students could continue open enrollment in secondary schools.

On November 17, 1997, the Board again declared there was insufficient classroom space at the middle and high school levels. Therefore, grades 7 through 12 were closed to open enrollment into the District for the 1998-99 school year. The District has an enrollment of 794 this year at the middle school. Last year, the middle school enrollment was 801. The middle school was designed for a maximum of 600 students, although a student body of 500 students would be preferable. The high school has an enrollment of 1585 students. Both the middle school and high school are extremely overcrowded, although the middle school is more overcrowded than the high school. The District has constructed four temporary classrooms at the middle school. The number of students affects programs and room usage. The problem is particularly acute in the middle school hallways during passing time and when serving lunch. A bond issue to build a new middle school failed in 1990. The District currently has a committee looking at long range facility plans, and would like to build a new middle school. However, there are no immediate plans to do so, and there is no chance additional construction would alleviate the insufficient classroom space for the 1998-99 school year. The Board therefore denied Ms. Congdon's request for open enrollment based on insufficient classroom space at the November 17, 1997 meeting. The Board also denied the open enrollment requests of two other parents whose children are in the same position as Alida at the November meeting.

The District has a policy that states that if resident students move out of the District, they may continue to attend school in the District through the twelfth grade. This policy is based on the statutory requirements, and because the District recognizes the value of continuation of education in the same district.

II. CONCLUSIONS OF LAW

Ms. Congdon asks why the District may deny her application when Alida has attended school in the District for seven years, when it would allow a student who had been a resident of the District for a very short time and moved out of the District to continue attending school in the District through twelfth grade. While we are very sympathetic to Ms. Congdon and Alida, and recognize that allowing students to continue their education in the same school district is of great value, we must uphold the decision of the Board. The open enrollment statute itself provides for the difference in the treatment of students in Alida's position, and those who were residents of the District and later moved out.

Iowa Code section 282.18(2)(1997) provides that a receiving district must enroll an open enrolled student "unless the receiving district does not have classroom space for the pupil." Similarly, an Iowa Department of Education rule provides that "No receiving district shall be required to accept an open enrollment transfer request if it has insufficient classroom space to accommodate the pupil(s)." 281 IAC 17.6(2). The rationale behind this statute and rule is that a District's first obligation is to its resident pupils. In re Brie Hodges, 15 D.o.E. App. Dec. 1 (1997).

On the other hand, Iowa Code section 282.18(9)(1997) provides that if a student, who is not using open enrollment and who is a resident of a district, moves out of the district, the student may continue his or her education in the original district of residence. There is no mention of insufficient classroom space in this section. Similarly, the rule provides for continuation cases with no mention of insufficient classroom space. 281 IAC 17.8(7). Therefore, according to the Code and the rule, a district must let the student stay in the district regardless of whether there is insufficient classroom space or not. The district does not have a choice in the matter.

Unfortunately for Mrs. Congdon and Alida, this is not a continuation case, even though Alida has attended school in the District since kindergarten. Alida has never been a resident of the District. Her grant of open enrollment was specifically for grades K-6 only. Since her grant of open enrollment will expire at the end of this year, she has had to apply for open enrollment the same as if she had never attended in the District.

The open enrollment law and Department of Education rules require each school district to adopt a policy that defines the term "insufficient classroom space" for that district. Iowa Code subsection 282.18(11)(1997); 281 IAC 17.6(3). The policy must be reviewed annually. 281 IAC 17.6(3).

In this case, the Board has a policy that defines insufficient classroom space. The Board has determined that it has insufficient classroom space for grades 7-12, and this determination is supported by the evidence presented by the District. The Board's determination that it will first look to the needs of its resident pupils is reasonable and is to be supported. One prior case of the Department of Education called a similar determination "highly responsible". In re Amanda J. Baker, 12 D.o.E. App. Dec. 210, 212 (1995). The Board applied its open enrollment/insufficient classroom space policy consistently, and to allow Ms. Congdon to open enroll Alida into the District would violate the policy. Although the addition of only Alida might not make much difference, the District cannot allow one student to continue and deny all others. The District correctly looked at the impact of not just Alida's application, but of all similarly situated applicants.

We are sympathetic to the Congdons' wishes. We are very sympathetic to working parents who must arrange transportation for their children to and from school and to activities. Obviously, it would be best for Alida to continue going to school with the same friends. However, our sympathy for their situation does not mean that the District was incorrect in denying their application. The District must look out for the needs of all the children who live in the District, not just what would be easiest or best for one child who does not live there.

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

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 Ames Community School District made on November 17, 1997, which denied Ms. Congdon's application for open enrollment for Alida, 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

CORINE HADLEY, PRESIDENT
STATE BOARD OF EDUCATION