

**IOWA STATE BOARD
OF EDUCATION
(Cite as 15 D.o.E. App. Dec. 128)**

In re Beth Randolph,	:	
Patricia Parsons, Appellant,	:	
v.	:	DECISION
Cardinal Community School District, Appellee.	:	

[Admin. Doc. #3929]

This case was heard telephonically on January 7, 1998, before a hearing panel comprising Mr. Jeff Berger, Bureau of Administration, Instruction, and School Improvement; Mr. Don Wederquist, Bureau of Community Colleges; and Amy Christensen, J.D., designated administrative law judge, presiding. The Appellant, Ms. Patricia Parsons, was present telephonically and was unrepresented by counsel. The appellee, Cardinal Community School District [hereinafter, "the District"], was present telephonically in the person of Mr. Roger Godfrey, Superintendent. The District was also 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 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 10, 1997, which denied her request for open enrollment for Beth Randolph, a student permanently living with the Parsons family.

**I.
FINDINGS OF FACT**

The Appellant, Mrs. Patricia Parsons, has lived in Agency with her family since August 1996. Agency is in the Cardinal School District. Prior to living in Agency, the family lived in Missouri. While in Missouri, Mrs. Parsons taught Beth Randolph in the seventh grade. One of Mrs. Parsons' daughters was also in the class. The two girls became friends, and have been friends for four years. Beth is also a friend of Mrs. Parson's other daughter, and Mrs. Parsons considers Beth to be a friend of the family.

Beth lived with her mother in Missouri until the summer of 1996. She does not know where her father is. Mrs. Parsons testified Beth's father left the family at or before the time Beth was born. Beth's mother was very young when she had her, and Mrs. Parsons does not know whether Beth's mother and father were married.

Beth was very unhappy at home, and ran away in the summer of 1996. When she was found, she was placed in the care of Family Services of Missouri, and lived in several foster homes for the next year. Her caseworker in Missouri is social worker Mr. Dennis Mitchell. Beth also counseled with Dr. Dee Wyckoff, who is a high school principal and guidance counselor in the Mercer, Missouri schools. Dr. Wyckoff also has known the Parsons family for several years. Beth completed her sophomore year in Missouri, and did well academically and lettered in track. However, she did have some emotional problems.

In September 1997, Beth decided she was ready to return home to live with her mother. However, Beth's mother has a man living with her, and the man does not want Beth to be there. Mrs. Parsons testified Mr. Mitchell said Beth's mother was not trying to make things work with Beth and did not want Beth to live with her.

Around October 24, 1997, Mr. Mitchell called Mrs. Parsons and told her Beth wanted to come to live with the Parsons family. He had talked with Beth's counselor at school, Dr. Wyckoff, who recommended placement with the Parsons. A letter Dr. Wyckoff wrote to Dennis Mitchell highly recommending the Parsons family as foster parents for Beth was admitted as evidence in this case. At the same time, Mrs. Parsons' daughter had already arranged to bring Beth to the Parsons home for homecoming. During that weekend, Beth told Mrs. Parsons she wanted to remain with the Parsons family. She has lived with the Parsons since the homecoming weekend. Mrs. Parsons testified this is a permanent arrangement, and she will do everything in her power to keep Beth in her home so Beth can succeed.

The Missouri court has not yet made the Parsons Beth's foster parents. At first, Mrs. Parsons testified she was hoping Beth's mother would grant her power of attorney but remain financially responsible for Beth. Mrs. Parsons testified they are not financially able to entirely support Beth. They would like to do the parenting and have Beth live with them permanently. Beth's mother has given Mrs. Parsons a medical card for Beth, and has informally granted her power of attorney in a letter. Mrs. Parsons testified Dennis Mitchell asked the Parsons if they would be willing to be guardians, but she told him they could not afford this. The Missouri court is currently working on adjudicating the Parsons as foster parents in an interstate foster care arrangement, but this is not yet completed.

Mrs. Parson's daughters are open enrolled to the Ottumwa District. When the family first moved back to Iowa, their home required extensive repairs, and the girls had to live with their aunt in Ottumwa. They attended school there, and once they moved back home, they continued attending school in Ottumwa.

When Beth came to live with them, Mrs. Parsons felt it was vital for her to return to school. She also felt Beth needed a great deal of supervision, and she knew she could not supervise her all the time. Mrs. Parson's daughters have a social life with other students who get good grades and are "high caliber kids". Therefore, Beth has been auditing classes in Ottumwa. Mrs. Parsons spoke to her teachers at conference time, and the teachers said if Beth were taking the classes for credit, she would be receiving A's and B's. After school, the group goes to the gym and works out. Mrs. Parsons knows the group is looking out for Beth and effectively supervising her 24-hours per day.

Mrs. Parsons feels Beth has been doing very well since she came to live with them. She quit smoking, and behaves well. She has only missed one day of school. Her teachers like her, and she seems very happy. She is in activities at school, and attends games. She seems well adjusted, and has a desire to finish school. Mrs. Parsons does not believe she would be happy if she could not go to school with her daughters, and does not know if she would do as well in the Cardinal District by herself where she would not have the support group looking out for her.

Mrs. Parsons filed an open enrollment application for Beth to attend school in Ottumwa on November 4, 1997.

The Cardinal School Board acted on the application at their Board meeting on November 10, 1997. Superintendent Godfrey testified that the Board was not without empathy for this situation. However, the Board thought if they granted this untimely application, they would be in an untenable position because they have not granted late-filed applications in the past. The Board did not believe the situation meets the state's good cause definition because the Parsons have not yet formally been appointed foster parents for Beth. Superintendent Godfrey testified the Board felt that Beth living with the Parsons and going to school with their children is certainly a desirable situation, but they could not in good conscience grant a late open enrollment request to Beth when they have denied them to a number of other people. The Board was also concerned that if they granted Beth's request, they would have to grant all other late-filed requests in the future. Therefore, the Board denied the application.

As soon as she received notice of the denial, Mrs. Parsons filed an open enrollment request for Beth for the 1998-99 school year. It is expected this will be approved since it was filed before the January 1st deadline.

The Cardinal District has a written open enrollment policy which requires parents to file applications for open enrollment out of the District by the statutory deadlines. This is Superintendent Godfrey's second year as superintendent of the District. He testified the written open enrollment policy with the requirement to file by the deadline was adopted by the Board about three years ago. Since the Board adopted the policy, it has not granted any late-filed applications out of the District. The only exceptions to this are if there is good cause for the late application or it is a continuation case. The District does grant late-filed applications for open enrollment into the District.

Superintendent Godfrey testified the District could offer a sympathetic counselor to Beth if she were to attend school in the District. He testified the District recognizes its at-risk program is not all that it could be, and submitted a plan for increased services to at-risk students for next year to the Iowa Department of Education. However, Mr. Godfrey does not yet know whether this will be approved.

The panel believes that the support network and peer supervision provided to Beth by Mrs. Parsons' daughters and their group of friends at Ottumwa is the key to Beth's success in school this year. Beth appears to be motivated to continue her education at Ottumwa. The panel believes that given Beth's history, if she were to attend school in the Cardinal District, she would drop out of school. The panel finds that there is no doubt that Beth's best interest is that she continue attending school in Ottumwa with Mrs. Parsons' daughters.

II. CONCLUSIONS OF LAW

The open enrollment law was written to allow parents to maximize educational opportunities for their children. Iowa Code §282.18(1)(1997). However, in order to take advantage of the opportunity, the law requires that parents follow certain minimal requirements. These include filing the application for open enrollment by January 1st of the preceding school year, unless they have good cause for the late filing or the student will be in kindergarten the following year. Iowa Code §282.18(2)(1997).

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 §§282.18(2) 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 Parsons have not yet been appointed by the court to be Beth's foster parents, the evidence is clear that they will be in the near future. Therefore, this is a similar circumstance which fits within the definition of good cause. *Id.* According to the statute itself, since Beth moved after January 1, 1997, and the Parsons will be appointed her foster parents after that deadline, we believe the Appellant has good cause for the late filing. However, the State Board rules add an additional requirement for parents, guardians, and foster parents with good cause, and for those of kindergarten children. The rules state that "A parent/guardian may apply for open enrollment after the filing deadline of January 1 and until June 30 of the school year preceding the school year for which open enrollment is requested if good cause exists for failure to meet the deadline". 281 IAC 17.4. The rule goes on to say that, "Good cause related to a change in the pupil's residence shall include: a) A change in the family residence anytime from January 1 through June 30 of the school year preceding the school year for which open enrollment is requested". 281 IAC 17.4(1). In 281 IAC 17.2, the term "Timely filed application" is defined as "an open enrollment request postmarked or hand delivered on or before January 1, an open enrollment request for 'good cause' as defined in Iowa Code §282.18(18) postmarked or hand-delivered on or before June 30, ... and an open enrollment request for an entering kindergarten student postmarked or hand-delivered on or before June 30". 281 IAC 17.7 states that "While the regular time frame in requesting open enrollment is that an application should be made no later than January 1 of the

school year preceding the school year for which the enrollment is requested, a parent/guardian requesting to enroll a kindergarten pupil in a district other than the district of residence may make such application through June 30 of that school year.”

The State Board recently considered the validity of the June 30th deadline in the rules in In re Zachary Juhl, 15 D.o.E. App.Dec. 75 (1997) and in In re Justin & Katelyn Thompson, 15 D.o.E. App. Dec. 93 (1997). In those cases, the Board and the Department upheld the validity of the rule and its application to the Appellants, who had also moved into their districts after the June 30th deadline.

Iowa Code section 282.18(17)(1997) provides: “The director of the department of education shall recommend rules to the state board of education for the orderly implementation of this section. The state board shall adopt rules as needed for the implementation of this section”. This provision has been in the code since 1989. 1989 Iowa Acts Ch 12, sec. 1, p.13. Therefore, so long as the deadline is for “orderly implementation” of the open enrollment law, the director may recommend it to the State Board, and the Board may adopt it if it “is needed for the implementation” of the open enrollment law. Iowa Code section 282.18(17)(1997).

In order to implement any number of statutory provisions, the Department puts specific deadlines in rules so schools and parents know what their respective responsibilities are, and specifically what is expected of them. This was true in implementing the open enrollment statute.

Since it followed the deadlines contained in state law, which included the requirement that Ms. Parsons file for open enrollment by June 30th, the District was justified in denying the requests for open enrollment, since the open enrollment requests were filed in November. We are supportive of the Cardinal Board’s wish to consistently follow their policy of not granting late-filed requests. However, we have previously stated that “If a District follows a policy of denial of late-filed open enrollment requests, but has an unusual case which it believes should be granted because of the specific circumstances of the case, the Board may grant the request, and if it states in the minutes of the Board meeting specifically why it is granting the request, it will only be obligated to approve future late-filed applications of the same factual nature.” In re Nicholas Olson, 15 D.o.E. App. Dec. 55, 58 n.1 (1997). Since the Board felt it would be best for Beth to continue attending school with the Parsons girls, it could have granted the request and only been bound to follow this precedent in cases with the same fact pattern, so long as it stated its specific reasons for the grant of the request in the minutes of the Board meeting.

There is no doubt in everyone’s mind that it is in Beth’s best interest that she attend school in Ottumwa with Mrs. Parsons’ daughters. The legislature has granted important authority to the State Board of Education to deal with extraordinary situations such as this one. Iowa Code section 282.18(18)(1997) provides as follows:

“Notwithstanding the general limitations contained in this section, in appeals to the state board from decisions of school boards relating to student transfers under open enrollment, the state board shall exercise broad discretion to achieve just and equitable results which are in the best interest of the affected child or children.” The State Board does not exercise this discretion often. It is important that the balancing of interests provided for in the open enrollment statute be followed in most cases. However, this is a unique case, and an appropriate case for the State Board to exercise its discretion under section 282.18(18)(1997). It is in Beth’s best interest that she be allowed to open enroll to the Ottumwa District.

III. DECISION

For the foregoing reasons, the decision of the Board of Directors of the Cardinal Community School District made on November 10, 1997, which denied Mrs. Parsons’ application for open enrollment for Beth to attend school in the Ottumwa District, is hereby recommended for reversal. 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