IOWA STATE BOARD
OF EDUCATION
(Cite as 15 D.o.E. App. Dec. 101)

In re Sarah & Mary Puderbaugh	:	
Sheryl Puderbaugh, Appellant,	:	
v.	:	DECISION
Interstate 35 Community School District,	:	
Appellee.	:	
		[Admin. Doc. #3925]

This case was heard telephonically on November 21, 1997, before a hearing panel comprising Dr. David Wright, Bureau of Administration, Instruction, and School Improvement; Dr. Gary Borlaug, Bureau of Practitioner Preparation & Licensure; and Amy Christensen, J.D., designated administrative law judge, presiding. The Appellant, Mrs. Sheryl Puderbaugh, was present telephonically and was unrepresented by counsel. The Appellee, Interstate 35 Community School District [hereinafter, "the District"], was present in the person of Mr. Andrew Gross, superintendent. The District was represented by Mr. Ronald Peeler.

An evidentiary hearing was held pursuant to departmental rules found at 281 Iowa Administrative Code. 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 October 20, 1997, which denied her request for open enrollment for her daughters, Sarah and Mary.

I.
FINDINGS OF FACT

The Puderbaugh family has lived on a farm near Peru, Iowa for sixteen years. The farm is located in the Interstate 35 District. The Puderbaughs have eight children. Three of the children graduated from Interstate 35 High School. Two sons are currently enrolled at Interstate 35 High School. Their daughter, Mary, is a third grader at Edmunds

Academy in Des Moines, and their daughter, Sarah, is a first grader at Edmunds. Mary and Sarah have never attended school in the Interstate 35 District. Mary is a special education student, and Sarah is not. The Puderbaughs also have a daughter who is not yet in kindergarten. The only children who are the subject of this appeal are Mary and Sarah.

For approximately six years ending September 1, 1996, Mrs. Puderbaugh also had an apartment in Des Moines. She worked full time teaching at the School of Nursing at Methodist Medical Center, and also worked half time in the critical care unit at Iowa Lutheran Hospital. The family farm was approximately an hour away from Mrs. Puderbaugh's employment, which is the reason she maintained the apartment. Mr. Puderbaugh and the children frequently spent the night at the apartment with Mrs. Puderbaugh. She also frequently stayed at the farm. Mrs. Puderbaugh testified that when Mary and Sarah were in preschool in Des Moines, they spent a lot of time in Des Moines with her. She also testified the times she stayed at the apartment with Mary and Sarah without the rest of the family could be counted on one hand. She did not keep track of the number of nights the family stayed in the apartment, and the number of nights they spent at the farm, and does not know whether they spent more nights at the apartment or the farm. At all times, the family, including Mrs. Puderbaugh, received mail and kept their telephone at the farm, and she considered her legal residence to be at the farm.

Mary has a congenital heart disease. She attended preschool in Des Moines. While she was in preschool, Mrs. Puderbaugh was frequently called to preschool due to Mary's heart problem. In the spring of 1994, the family began to question how they would be able to handle the situation with Mary in school in the Interstate 35 District, because it was 50 minutes away from Mrs. Puderbaugh's job in Des Moines. Edmunds Academy in Des Moines is near Iowa Methodist Medical Center. The family decided to open enroll Mary from the Interstate 35 District to Des Moines so she could attend Edmunds Academy. At kindergarten orientation in March, Mrs. Puderbaugh told Edmunds of the family's intent to send Mary to Edmunds, and obtained open enrollment forms. She filled out the forms, and sent them to the Interstate 35 District in the spring of 1994.

However, the Interstate 35 Board either declined to act on the application, or denied the application, and sent the Puderbaughs notice of this action. Mrs. Puderbaugh went to school and spoke with Superintendent Brichacek about why the application had been denied. He told Mrs. Puderbaugh that the Board had declined to act on the application because they did not consider Mary to be a resident of the Interstate 35 District. She asked how that could be, since her official residence was at the farm near Peru, they paid taxes and received mail there, and they did everything from that address. He said they knew she had an apartment in Des Moines, and they believed Mary spent a lot of time there. Superintendent Brichacek told her legal residence is determined by where the child sleeps most of the time, the District believed Mary spent more nights in Des Moines, and therefore she was not a resident of the District. Although Mrs.

Puderbaugh questioned this reasoning, and still does, she did not argue with Superintendent Brichacek. He told Mrs. Puderbaugh to use her Des Moines address and enroll Mary in the Des Moines District.[1] Mrs. Puderbaugh also testified Superintendent Brichacek said he thought that she should go to Des Moines and open enroll the boys from Des Moines to Interstate 35, and that it would be approved because the law requires if a person moves, they would be allowed to continue at Interstate 35. The Puderbaughs did not do this, and no one ever asked again for an application for the boys[2].

She therefore enrolled Mary as a kindergarten student at Edmunds for the fall of 1994. When she enrolled Mary, she explained she had an apartment in Des Moines and asked whether she could use that address, and the administration at Edmunds said she could. Mary has attended school at Edmunds since then, and she is currently in third grade. The Puderbaughs also decided to enroll Sarah in kindergarten at Edmunds, beginning with the 1996-97 school year. It was convenient for Mrs. Puderbaugh to drop the girls off and pick them up at school on her way to and from work. She gave up the apartment effective September 1, 1996. When she registered the girls at Edmunds, she gave the school the girl's address at the farm, and told them she would no longer have the apartment. She also talked directly to the girls' teachers. At that time, no one told her she needed to reapply for open enrollment, and she did not apply for open enrollment for either Sarah or Mary at that time.

Mr. Gross officially began his duties as superintendent of the District July 1, 1997. Mr. Gross became aware that Mary and Sarah were residing in the District with the rest of the family. He also learned Mary was not attending school in the District, although he was confused regarding Sarah because there were other Puderbaugh children attending in the District. He spoke to the AEA special education consultant, Brad Jermaland. Mr. Gross testified Mr. Jermaland advised him to include Mary and Sarah in the official count of the Interstate 35 District made on the third Friday of September 1997, because they were residents of the District. Mr. Gross did include Mary and Sarah in the District's official count, which was made on September 19, 1997, and certified on October 1, 1997. (The girls were never counted in the Interstate 35 District official count in any prior years.) The Interstate 35 District included the girls in its official count for

[1] In an affidavit filed in this appeal, the current Superintendent, Mr. Andrew Gross, stated he had not been able to find a copy of the 1994 open enrollment application in the District records. At the hearing, Mrs. Puderbaugh testified the Board minutes with the denial had been published in the school newsletter. Mr. Gross testified he had not checked the Board minutes to see if the Board had declined to act on the application in 1994. He also testified he had spoken with the former Superintendent, Mr. Brichacek, and Mr. Brichacek remembered the conversation with Mrs. Puderbaugh. Therefore, it was apparent at the hearing the District does not disagree with Mrs. Puderbaugh's testimony regarding what occurred in 1994, even though Mr. Gross has no knowledge of it since he was not working in the District in 1994. Former Superintendent Brichacek did not testify at the hearing.

[2] There was no evidence presented at the hearing as to whether the I-35 District included the boys in its official count.

1997 before any application for open enrollment was received. No one at the hearing knew whether the Des Moines District had also counted Mary and Sarah in its official count made on September 19, 1997.

In late September 1997, one of the girls brought home open enrollment application forms for the 1998-99 school year on a Friday. Mrs. Puderbaugh does not remember which of the girls brought home the applications, but they were supposed to be returned by the following Monday. No instructions were given to her. She could not call anyone because it was a Friday, and the forms were supposed to be returned the following Monday. Mrs. Puderbaugh did not know why she had to fill out the forms, and did not know the purpose of the form. She thought perhaps she had to fill out the form every number of years. She also thought the form was for the Des Moines District, and had no idea it was going to go to the Interstate 35 District. She didn't know whether she was being asked to do this because of her address change, although she didn't understand why they wouldn't have asked her to fill out the form the previous year when her address had actually changed. At the time she filled out the forms, Mrs. Puderbaugh thought she was applying for open enrollment for the 1998-99 school year. She did not mark anything on question 11, because she did not understand the purpose of the forms. (Question 11 is the continuation of educational program question on the open enrollment application form for 1998-99.) She sent the forms back to Edmunds on the following Monday as requested. (The date written on the applications is September 28, 1997, which was a Sunday.) Mrs. Puderbaugh did not cross out the years 1998-99, which were printed at the top of the forms, and change them to 1997-98.

The Interstate 35 District received the applications from the Des Moines District on October 8, 1997. When Mr. Gross received the Puderbaugh applications, the years 1998-99 were crossed out at the top of the forms, and years 1997-98 were written in. He does not know who made this change. To his knowledge, no one from the Interstate-35 District changed the forms. Because the forms were marked 1997-98 at the top, the District thought they were applications for open enrollment for the 1997-98 school year. The District denied the applications because they were not timely filed. The continuation question, question 11, was not filled out. No one from the District called the Puderbaughs to clarify the answer to this question. At the time he made his recommendation to the Board, Mr. Gross was not thinking about the continuation situation. He was thinking the applications should have been filed by January 1, 1997. He recommended the Board deny the applications on the ground they were not timely filed. The Board denied the applications without discussion on October 20, 1997. Mrs. Puderbaugh then filed this appeal.

Mr. Gross testified he believes the Interstate 35 District could serve Mary as a special education student. No meeting regarding provision of special education services for Mary has been held with Interstate 35 staff and the Puderbaughs. Mrs. Puderbaugh testified it is her intent to have the girls attend Edmunds until they are in middle school, and then have them transfer to the I-35 District.

II.
CONCLUSIONS OF LAW

Ordinarily, parents must file open enrollment requests by a deadline of January 1st. Iowa Code section 282.18(2)(1997). However, 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) and (16)(1997). This is the deadline Superintendent Gross was applying to Mrs. Puderbaugh's applications. Since the applications were marked for the 1997-98 school year by the time he saw them, he believed the applicable date to be January 1, 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.

281 IAC 17.4. The State Board has chosen to review potentially "similar sets of circumstances" on a case-by-case basis through the contested case appeal process. In re Ellen and Megan Van de Mark, 8 D.o.E. App. Dec. 405, 408. The good cause exception relates to two types of situations: those involving a change in the student's residence, and those involving a change in the student's school district. Iowa Code sec. 282.18(16)(1997); 281 IAC 17.4.

However, the legislature has provided for one situation which takes an open enrollment request outside the normal requirement for filing by the January 1st deadline or having good cause. Iowa Code 282.18(9)(1997). This section states as follows:

> If a request to transfer is due to a change in family residence, change in the state in which the family residence is located, a change in the 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, and the child, who is the subject of the request, is not currently using any provision of open enrollment, the parent or guardian of the child shall have the option to have the child remain in the child's original district of residence under open enrollment with no interruption in the child's educational program. If a parent exercises this option, the child's new district of residence is not required to pay the lower of the two district costs per pupil or other costs to the receiving district until the start of the first full year of enrollment of the child.
>
> Quarterly payments shall be made to the receiving district.
> …
> A district of residence may apply to the school budget review committee if a student was not included in the resident district's enrollment count during the fall of the year preceding the student's transfer under open enrollment.

Iowa Code 282.18(9)(1997).

This case is a continuation case in the sense that Sarah and Mary have never attended school anywhere other than at Edmunds, and Mrs. Puderbaugh wants them to continue at the same school with no interruption in their education. However, it is far from clear where they have been residents, and therefore whether there has been a change in family residence. In any case, the I-35 District considered them to be residents of Des Moines, and therefore it should have treated this as a continuation case rather than a case requiring an application by January 1, 1997.

However, Superintendent Brichacek was incorrect when he advised Mrs. Puderbaugh that Mary's residence depended on where she slept, that it was their view that she slept more at the apartment, and that therefore she was not a resident of the I-35 District. Since Superintendent Brichacek did not testify at the hearing, we do not know the basis for his belief that Mary slept more nights at the apartment. The evidence we have at the hearing is that Mrs. Puderbaugh does not know whether Mary slept more nights at the apartment or at the farm. In addition, evaluation of whether Mary was a resident of the I-35 District or not depended on an evaluation of many more factors than where she spent most nights. Iowa Code section 282.1 (1997); Lakota Consolidated Independent School v. Buffalo Center/Rake Community Schools, 334 N.W.2d 704 (Iowa 1983); Mt. Hope School District v. Hendrickson, 197 N.W. 47 (Iowa 1924); Declaratory Ruling No. 33, 1 D.P.I. Dec. Rul. 80 (1984); In re Laue, 11 D.o.E. App. Dec. 104 (1994); In re Menke, 4 D.P.I. 220; In re Oshel, 2 D.PI. 236 (1981); Op. A.G. January 10, 1969; Op. A.G. March 6, 1957; Op. A.G. July 12, 1933.[3] One common thread running through the cases and discussion of residence law is that one of the most important factors to be considered is whether Mrs. Puderbaugh intended to make the apartment her home. In this case, she has always considered her official residence to be at the farm. That is where she receives mail, has her telephone, and from where she conducts her personal business. The family spent time at both the apartment and the farm, and no one knows where they spent the most time. Although it is difficult to make a judgement several years later, based on the facts presented at the hearing, we believe it was probably correct for Mrs. Puderbaugh to file an application for open enrollment for Mary in 1994. While we do not know the date of the application, it was sometime during the spring of 1994. Since Mary was a kindergarten student, the application was timely, and should have been granted. Presumably, if that had been done, Mrs. Puderbaugh would have filed an application for Sarah as well when it was her turn to start school.

It is also true that students may be considered as residents of a district even if they are living in the district temporarily, so long as they are actual residents of the district, and they are residing in the district for a primary purpose other than school attendance. Declaratory Ruling No. 33, 1 D.P.I. Dec. Rul. 80 (1984). The "determination of whether tuition is charged in such cases is left to the discretion of the local board." Id. In this case, the Des Moines District evidently considered the girls to be residents and did not charge them tuition.

The Department's rules also discuss the continuation of a child's educational program in the open enrollment context at 281 Iowa Administrative Code 17.8(7). That rule states:

[3] Because the determination of residency of a student depends upon an evaluation of many factors and is a legal determination to be made based on the facts of each situation, we strongly encourage districts to seek legal advice whenever they are faced with a residency question.

> Change in residence when not participating in open enrollment. If a parent/guardian moves out of the school district of residence, and the pupil is not currently under open enrollment, the parent/guardian has the option for the pupil to remain in the original district of residence as an open enrollment pupil with no interruption in the educational program. The parent/guardian exercising this option shall file an open enrollment request form with the new district of residence for processing and record purposes. This request shall be made no later than the third Thursday of the following September. Timely requests under this subrule shall not be denied. … If the move is after the third Friday in September, the new district of residence is not required to pay per-pupil costs or applicable weighting or special education costs to the receiving district until the first full year of the open enrollment transfer.

If we assume Mrs. Puderbaugh and the girls were residents of the Des Moines District at any time, their residence ended in any case in September of 1996 when they gave up the apartment. Since Mrs. Puderbaugh wanted the girls to continue at Edmunds, if we assume the continuation statute rule applies, she should have filed her application for open enrollment by the third Thursday of September 1997, which is the third Thursday of the following September. The statute contains no filing deadline for continuation cases. Iowa Code 282.18(9)(1997). The purpose of the filing deadline of the third Thursday in September contained in the rule is so the student will be accurately counted in the new district of residence the next day (the third Friday in September) for state aid. In re Jordan Bright, 11 D.o.E. App. Dec. 195, 197 (1994). In this case, the purpose of the deadline has been served, because the I-35 District counted the girls in its official count made in September 1997.

It is also problematic that Mrs. Puderbaugh filled out applications for the 1998-99 school year, but the I-35 District acted on applications for the 1997-98 school year. It is troubling to the panel that someone changed the forms after they had been submitted by Mrs. Puderbaugh without her knowledge. It also leaves open the question of whether the applications must be considered as for 1997-98 or 1998-99.

Regardless of the mistakes which may have been made in the past, and the legal complexity of the application itself, the decision must be reached whether Mary and Sarah should be allowed to continue their education at Edmunds.

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."

This case is one which "cries out for extraordinary exercise of power bestowed upon the State Board", and is "a case of such unique proportions that justice and fairness require the State Board to overlook the regular statutory procedures". In re Katie Webbeking, 10 D.o.E. App. Dec. 268 (1993). Clearly, it would not be in Mary and Sarah's best interest to uproot them from Edmunds, the only school they have ever attended, and move them to the I-35 District in the middle of the year. This is particularly true of Mary, who is a special education student. It is in Mary's and Sarah's best interest that they be allowed to open enroll to the Des Moines District, so they may continue their education at Edmunds.

III.
DECISION

Therefore, we will consider the applications for open enrollment to have been for the 1997-98 school year and all years following. For the foregoing reasons, the decision of the Board of Directors of the I-35 District made on October 20, 1997, which denied Ms. Puderbaugh's applications for open enrollment for her children to continue attending school in the Des Moines 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