

**IOWA STATE BOARD
OF EDUCATION
(Cite as 15 D.o.E. App. Dec. 36)**

**In re Jessica, Jennifer, &
Christopher Villegas**

:

Susan Villegas,
Appellant,

:

v.

:

DECISION

Des Moines Independent
Community School District,
Appellee.

:

:

[Admin. Doc. #3909]

This case was heard telephonically on September 10, 1997, before a hearing panel comprising Mr. Vic Lundy, Bureau of Technical and Vocational Education; Ms. Charlotte Burt, Bureau of Special Education; and Amy Christensen, J.D., designated administrative law judge, presiding. The appellant, Mrs. Susan Villegas, was present telephonically and was unrepresented by counsel. The Appellee, Des Moines Independent Community School District [hereinafter, "the District"], was present telephonically in the person of Dr. Thomas Jeschke, Executive Director of Student Services. 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 August 5, 1997, which denied her request for open enrollment for her children, Jessica, Jennifer, and Christopher.

**I.
FINDINGS OF FACT**

Until February of 1996, the Villegas family lived in the Saydel school district, and the two older children, Jessica and Jennifer, attended school in the Saydel district at Cornell school. In February 1996, the family moved to 4136 10th St. in Des Moines,

which is just inside the Des Moines District. Jessica and Jennifer continued to attend school in the Saydel district, and finished the 95-96 school year at Cornell. (Mrs. Villegas filed for open enrollment and this was granted under the continuation section of the open enrollment law (282.18(9)(1997).) Christopher was not yet in school. The Villegas children are Hispanic, so it would not violate the Des Moines District's desegregation plan if they left the District.

Mr. Villegas was transferred to Illinois by his company. Mrs. Villegas' parents moved into the home at 4136 10th St. so the home would stay in the family. The Villegas moved to Illinois, and Jessica and Jennifer attended the 1996-97 school year in Illinois. Mrs. Villegas testified that the children had a rough time in Illinois, and it was not a good place to raise children.

Mrs. Villegas' parents both suffer serious medical problems. One parent has had lung cancer, and the other has heart problems, glaucoma, and a serious broken foot. The parents were not able to live in the home by themselves and maintain it, so the Villegas decided to return to Des Moines to live with her parents and take care of them. Mr. Villegas could not immediately transfer back, and he will continue to live in Illinois until October.

The Villegas made the decision to open enroll the children to the Saydel district for several reasons. Primarily, they would like Jessica and Jennifer to continue in the same school with which they are familiar, with their friends and teachers they know. Christopher is in kindergarten this year. Also, Mrs. Villegas must get a job to help support the family, and she will not be available to take the children to and from school. Her parents are not physically able to walk the children to and from school if they attend school in Des Moines. The school building in Des Moines is about six and a half blocks from the Villegas home. One time Mrs. Villegas' mother tried to walk with the children to school, and she was not physically able to do so. There is no car available for Mrs. Villegas' parents to transport the children. Mrs. Villegas testified she will not let her children walk to and from school by themselves, because during the spring of 1996, there was a man who parked down the block and flashed students on their way to and from school. The students said he was there quite often. Mrs. Villegas does not know if anyone from the Des Moines schools or the police took any action with respect to the flasher. Also, she testified that Christopher, who attends half-day kindergarten in the afternoon, is not capable of walking by himself to school. She testified they do not have anyone else in the neighborhood who could walk with the children to and from school. On the other hand, if the children attend school in Saydel, the bus stop is two houses away from the family home.

During the last week of June and first week of July 1997, Mr. Villegas was on vacation, and the family came to Des Moines. While in Des Moines, during the last week of June, Mrs. Villegas called the open enrollment office for the Des Moines district to ask for open enrollment application forms.

Exactly what was said during this and subsequent conversations is not entirely clear, and the parties have different views of what was said. We will attempt to set out the views of each of the parties.

Mrs. Villegas testified that when she called at the end of June, she was told the forms were not available yet. Therefore, she thought if the forms were not available, there could be no rush, so she did not leave her name. She thought she could call back later and everything would be fine. Mrs. Villegas testified she now guesses the person she talked with assumed she was talking about open enrollment forms for the 98-99 school year. She testified that no one told her the open enrollment period for the 97-98 school year was closed. Dr. Jeschke testified the open enrollment office keeps a record of each parent's name and the date they called, and the office has no record of this call.

Mrs. Villegas testified she then called back just before the family left to return to Illinois, which would have been soon after the 4th of July. During this conversation, she left her name, and again requested open enrollment forms and was told they were not available. She testified that no one told her the open enrollment period for the 97-98 school year was closed, or she and her mother would not have kept calling. She also testified that since she had to return to Illinois, she tried to set things up so her mother could call for her to get the forms once they were available. Mrs. Villegas also called the Saydel district office regarding open enrolling into the district, was told there would be a Board meeting on July 21st, but that Saydel could not do anything until the Des Moines district acted.

Dr. Jeschke testified the first record the District has of a telephone call from Mrs. Villegas was on July 7th, in which she requested open enrollment forms. He testified the staff told Mrs. Villegas the application period for the 97-98 school year was closed, but upon continued parent request, the application forms were sent. He testified the District sent forms, but they were returned as undeliverable.

Mrs. Villegas' mother and father then called the District's open enrollment office repeatedly during July to request forms. Mrs. Villegas' mother, Mrs. Fritzie Clark, testified she kept calling the Des Moines' open enrollment office, and told them she was anxious to get the forms because the Saydel Board was meeting on July 21st. She testified she called several times, and did not call more because she didn't want to antagonize the office by calling too much.

Dr. Jeschke testified his staff would have told Mrs. Villegas and Mrs. Clark the open enrollment period for the 1997-98 school year was closed. He also testified the staff may have tried to be helpful and may have told Mrs. Clark to try to get the applications in as soon as possible, that they didn't know if it would make a difference, but that they would try to process them as quickly as they could. Dr. Jeschke testified one of his staff remembers the parent saying something about the Saydel Board meeting coming up, so they encouraged them to get the forms back soon because the Des Moines Board has to act first. Mrs. Clark testified no one ever told her the application period for the 97-98 school year was closed.

In any case, there was obviously miscommunication between Mrs. Villegas, Mr. and Mrs. Clark, and the staff in the Des Moines District's open enrollment office. We do not believe this was anyone's fault, but simply one of those things which happens from time to time because people are looking at things from different perspectives. The panel believes Mrs. Villegas did call before June 30th, but that there was no telephone record made because she did not leave her name. The panel believes it is most likely that the staff thought Mrs. Villegas and the Clarks were requesting forms for the 98-99 year, at least in the first conversations, while Mrs. Villegas and the Clarks thought the staff was telling them the forms for the 97-98 year were not yet available. It is particularly unfortunate that Mrs. Villegas did not make herself clear in the first conversation before June 30th, and that the staff did not ask Mrs. Villegas if the family had or would be moving, if any child was a kindergarten student, if Mrs. Villegas was asking for forms for the 97-98 year, and that the "good cause" and kindergarten deadline was June 30th, so she could get the applications in on time.

Later in July, the District sent open enrollment application forms, which were received by the Clarks on about July 21st. The application forms were for the 98-99 school year. Mrs. Clark filled the forms out at her daughter's direction, and brought them to the Des Moines open enrollment office on July 21st. At that time, she told the staff the forms were for the 97-98 year, and a staff member crossed out the 98-99 year on the form and wrote in 97-98.

Mrs. Villegas and the children moved to Des Moines on about July 29, 1997.

At the Board meeting on August 5, 1997, the Board denied the applications as being late without good cause. Mrs. Villegas then appealed to the State Board.

Since the Board denied the open enrollment requests, the children have been attending school in the Des Moines District. Mrs. Villegas walks them to and from school, although she needs to get a job, and will not be able to continue walking them. She is concerned about her younger daughter, Jennifer. While at Saydel, Jennifer was identified as gifted. Although the District did not have a formal gifted program available

for Jennifer, it created one for her. Since Jennifer has been attending school in Des Moines, Mrs. Villegas talked with her teacher about a gifted program, and was told there was nothing available for second graders. She is afraid Jennifer will get lost through the cracks. Both girls are very bright. Unlike Jennifer, Jessica is getting some special instruction in the fourth grade.

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, including 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).

Therefore, under the statute, since the Villegas moved after January 1, 1997, it would appear they have good cause for the late filing, and their application should have been granted. However, the State Board rules put an additional requirement on parents with good cause, and on parents 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.” Since Mrs. Villegas did not file her applications by June 30th, she did not have good cause for the late filing of the applications. 281 IAC 17.4.

Mrs. Villegas gave several other reasons besides the family’s move for her applications for open enrollment. However, none of those reasons are good cause as that term is defined by the legislature and State Board rules or case law. State Board rules do not expand the types of cases considered to be good cause. 281 IAC 17.4. 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 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). Good cause was not met when a working mother had difficulty transporting her child to school. In re Clark Daniel Campos, 14 D.o.E. App. Dec. 301(1997).

In this case, as in the others, we are not being critical of Mrs. Villegas' reasons for wanting open enrollment. We are very sympathetic to the difficulties experienced by working parents. However, the reasons other than the family's move 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 §282.18(16)(1997).

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 Des Moines Independent Community School District made on August 5, 1997, which denied Mrs. Villegas' request for open enrollment for her children to attend school in Saydel for the 1997-98 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

CORINE HADLEY, PRESIDENT
STATE BOARD OF EDUCATION