

**IOWA STATE DEPARTMENT  
OF EDUCATION  
(Cite as 15 D.o.E. App. Dec. 22)**

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**In re Jason & Joshua Toenges** :  
  
Duane & Coleen Toenges, :  
Appellants, :  
  
v. : DECISION  
  
Titonka Consolidated :  
School District, :  
Appellee. :

[Admin. Doc. #3904]

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This case was heard telephonically on August 4, 1997, before a hearing panel comprising Dr. Maryellen Knowles, Bureau of Administration, Instruction, and School Improvement; Ms. Mary Wilberg, Bureau of Technical and Vocational Education; and Amy Christensen, J.D., designated administrative law judge, presiding. The Appellants, Mr. Duane and Mrs. Coleen Toenges, were present telephonically and were unrepresented by counsel. The Appellee, Titonka Community School District [hereinafter, “the District”], was present telephonically in the persons of Mr. Don West, superintendent; Ms. Mary Beth Wubben, board secretary; and board members Mr. Jeff Schutjer and Dr. Michael Heyer. 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 Director of the State Department of Education have jurisdiction over the parties and subject matter of the appeal before them.

Mr. and Mrs. Toenges, the Appellants, seek reversal of a decision of the Board of Directors [hereinafter, “the Board”] of the District made on June 24, 1997, which denied their request for open enrollment for their sons, Jason and Joshua.

**I.  
FINDINGS OF FACT**

The Appellant, Mr. Toenges, is the general manager of the Titonka Farmers’ Cooperative. The Cooperative has been involved in ongoing legal battles regarding hedge-to-arrive contracts. Titonka is a town of approximately 600 people.

The Cooperative legal battle has caused extreme emotions in the town, and has split the community. Some of the local producers have sued the Cooperative, and the Cooperative has filed counterclaims.

Mr. and Mrs. Toenges filed their requests for open enrollment on behalf of their two children: Joshua, who is in the 8<sup>th</sup> grade in the 1997-98 school year, and Jason, who is in the 6<sup>th</sup> grade in the 1997-98 school year. In the Titonka District, the Toenges children have to attend school and participate in sports and other activities with children of parents who are suing the Cooperative. This has made things extremely stressful for the children. The Toenges filed their applications for open enrollment to allow their children to leave the District due to the stress related to the Cooperative's legal problems. They also filed their applications for academic reasons, and believe another District would be more beneficial for their children. Mr. Toenges testified the children have been harassed by both students and a teacher as a result of the Cooperative's legal battles. He also believes the music program in the Algona District would be better for his son, Joshua, than that offered in the Titonka District.

Mr. Toenges testified they were aware of the open enrollment deadline of January 1<sup>st</sup>, but intentionally waited to file their open enrollment applications until the end of the school year. They did this to alleviate the pain suffered by their children as a result of the legal battles of their father, and to avoid additional scrutiny of them. Mr. Toenges testified they considered filing their request for open enrollment by the deadline, but relied on the past precedent set by the Board in always granting open enrollment applications regardless of when filed.

At the hearing, Mr. Toenges testified in detail to the harassment suffered by Joshua from a teacher and football coach. He also testified as to details regarding why they were unhappy with the music program in the Titonka District; as to extracurricular programs of the Titonka and Algona Districts; as to problems they perceived with the Junior National Honor Society Program at Titonka; and as to efforts the Toenges have made to alleviate these problems with school officials.

Mr. Toenges testified that during the last four years, approximately 48 students have requested open enrollment out of the District, and approximately 11 of these were filed after January 1<sup>st</sup>. He also testified that there could have been more late applications, because it was not clear from the information he had whether all of the other applications were filed on time. Mr. Toenges testified that 12 students had requested open enrollment into the District after the January 1st deadline, and they were all approved. He testified that the latest approval for an incoming late-filed open enrollment application was made by the Board on June 5, 1997. However, Board Member Heyer testified this application was for a kindergarten student, and was therefore not late.

Mr. Toenges testified that one of the Titonka School Board members, Mr. Mike Heyer, has a brother who is suing the Cooperative. Therefore, he alleges that Mr. Heyer has a conflict of interest, and should not have participated in the decision making of the case at the June 24, 1997, Board meeting. Mr. Toenges did not raise the issue of a conflict of interest at the June 24, 1997, Board meeting. Mr. Toenges testified that at the June 24<sup>th</sup> meeting, the Superintendent and Board discussed the financial difficulties open enrollment was causing the District. Mr. Toenges testified that this was the reason the Board decided to stop granting late-filed open enrollment requests. He also testified that two Board members questioned the legality of the decision to deny the open enrollment requests because of past precedent by the Board, and that one Board member stated that the Board needed to inform the public that it was now going to enforce the January 1<sup>st</sup> deadline.

The Toenges submitted a list of students who had applied for and had been granted open enrollment out of the Titonka District. They also submitted a list of students who had open enrolled into the District after January 1<sup>st</sup>. All student requests in and out of the District were granted by the Titonka Board. The majority of the open enrollment requests were submitted in a timely fashion. However, there were late-filed open enrollment requests out of the District which were granted beginning June 14, 1993, and ending with the open enrollment requests which were granted in April and May of 1996. Late-filed open enrollment requests out of the District were granted in 1993, 1994, 1995, and 1996. Mr. Toenges testified that the record was not clear or complete, so the exact number of late-filed open enrollment applications which were granted may not be accurate. However, all of the open enrollment applications, regardless of whether they were late-filed or not, were granted.

The first time the Toenges were notified that the Board would no longer approve late-filed open enrollment applications was at the June 24, 1997, Board meeting, when their applications were denied. The Toenges had no prior notification that the Board was going to change its policy and enforce the deadline. The Toenges felt that their applications would be granted since the Board had always granted late-filed applications. Mr. Toenges did not even attend the Board meeting, although Mrs. Toenges was present, because he assumed the applications would be granted. Because they assumed the applications would be approved, they did not present evidence of the difficulties experienced by their sons and the reasons for the open enrollment applications to the Board. The Toenges also did not feel it was necessary to raise the conflict-of-interest issue at that Board meeting since they believed the applications would be granted. Superintendent West testified that at the Board meeting, Mrs. Toenges was asked why they filed their applications for open enrollment, and Mrs. Toenges stated it was because of the music program. At the Board meeting on June 24, 1997, Mrs. Toenges

intentionally did not raise the other issues when asked why the application was being filed because of the legal problems. Mr. Toenges testified he had told her not to air everything in public, since the past precedent was clear that the applications would be granted anyway.

Superintendent West testified as to the District's efforts to work with Mrs. Toenges to alleviate the harassment situation. Superintendent West believed that the situation had been solved during the school year.

In the June 26, 1997, Titonka newspaper, there was an article which stated that the Titonka Board of Education had decided to take a hard-line stand on late-filed open enrollment applications. The article told of the denial of the open enrollment applications for two middle-school students at the June 24<sup>th</sup> Board meeting, that another late-filed application had been tabled until the following month, and quoted one board member, Nola Cooper, as saying, "It is now time to inform our public that we will adhere to those dates."

Although Superintendent West testified that most of the prior late-filed open enrollment requests had been granted because they were related to changes in the District's whole-grade sharing agreements, this was not articulated to the public. Superintendent West testified that in 1989 or 1990, the District entered into a whole-grade sharing agreement with Buffalo Center. This whole-grade sharing agreement did not work out, and Titonka later entered into a whole-grade sharing agreement with Woden-Crystal Lake. When Titonka pulled out of the whole-grade sharing agreement with Buffalo Center, Superintendent West testified that the Board's position was that although students by law had 45 days to file for open enrollment, the Board would not hold anyone to this time deadline. He testified the Board decided it would approve any open enrollments, and let the people decide where they wanted to send their children to school. The Titonka Board made the decision to change whole-grade sharing partners on October 20, 1994. The change occurred for the 1995-96 school year.<sup>1</sup>

On April 18, 1996, the Board granted a late-filed open enrollment application for Andrea Christenson. On May 13, 1996, the Board approved a late-filed open enrollment request for Jennifer Sleper. Superintendent West testified the reasons for granting the late-filed open enrollment requests were not given. From May of 1996 through June of 1997, the District did not have any other late-filed open enrollment applications.

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<sup>1</sup> The panel notes that late-filed open enrollment applications were granted on June 14, 1993; March 14, 1994; three on July 14, 1994; and August 18, 1994. These applications were for students wanting to leave the District. In addition, the Board granted late-filed open enrollment applications for students coming into the District on May 10, 1993; September 13, 1993; and two on March 14, 1994.

At the Toenges' hearing, Superintendent West testified that the two applications granted in April and May of 1996 were related to the change in whole-grade sharing. He testified this was because these were two 8<sup>th</sup> grade students who wanted to choose where they went to high school.

The Toenges' hearing was held on the same day and immediately following the Kitzingers' hearing. The Kitzinger appeal involved the Tintonka District and a denial by the Board of a late-filed open enrollment application at its July 1997 meeting. At the Kitzinger hearing, Superintendent West did not testify that the reason the 1996 applications had been granted was related to the change in whole-grade sharing partners. Rather, the evidence at the Kitzinger hearing was, by testimony of both Superintendent West and Board Member Jeff Schutjer, that there was no significant difference between the late-filed open enrollment applications that had been granted in 1996 and the Kitzingers' application filed in 1997. In any event, any reason for the granting of the late-filed open enrollment applications made in 1996 was not stated at the time the decision was made.

Additionally, Superintendent West testified at the Toenges' hearing that the only reason late-filed applications had been approved in the past was related to the change in whole-grade sharing partners. At the Kitzingers' hearing, Superintendent West testified that most, but not all, of the late-filed applications had been related to the change in whole-grade sharing partners. Again, the Board never articulated to the public the reasons it was granting late-filed open enrollment applications.

Superintendent West testified that there was a change in the Board membership in September 1996, and the feeling of the Board regarding late-filed open enrollment applications changed. Superintendent West testified that the Board did not have a policy of granting late-filed open enrollment application prior to June 24<sup>th</sup>. Rather, the Board had "a feeling" that it would go along with late-filed open enrollment applications. When the change of board members occurred in September 1996, then Superintendent West believes the feeling of the Board changed. The Board did not do anything to inform the public that its feeling had changed regarding late-filed open enrollment applications. The first time the Board denied late-filed open enrollment applications were the Toenges applications that were denied on June 24, 1997. The District had no late-filed applications for open enrollment out of the District submitted between January 1, 1997, and May 31, 1997.

Board Member Dr. Michael Heyer testified that the change in Board members was the cause of the difference in the votes between prior years and this year. He also testified that the District had had time to see how the new whole-grade sharing agreement had worked out, and it was the feeling of the Board that it was time to solidify the system.

However, prior to June 24, 1997, the Board did not discuss any change in feeling or practice of the Board regarding late-filed open enrollment applications. He also testified that a subsequent Board should not have to follow the practices of a former Board. He testified that it was his belief that the past practice of the Board was related to the change in whole-grade sharing partners. Dr. Heyer was the only Board member who voted “no” on the late-filed open enrollment requests that were approved in April and May of 1996. He believes that the Board should follow the open enrollment deadlines set in the law. Dr. Heyer testified, in his opinion, the Board granted the late-filed open enrollment applications in 1996 based on the first year’s experience with the whole-grade sharing agreement.

With respect to the alleged conflict of interest charge, Dr. Heyer testified that he is not the only Board member with ties to the Cooperative. He also testified that in his mind there was no one in the community who had not been touched by this situation. Dr. Heyer also testified that it was an unfortunate situation, but the Board was talking about the children’s education. He testified that he knew a lot of these children were going through stress and that the District needed to take care of them. He believes this is true of every child of every Cooperative member, including the Toenges’ children.

The District published notice of the January 1<sup>st</sup> open enrollment deadline in the Titonka newspaper in September, 1996. Notice also appeared in the school newsletter that was sent to every patron in the District in the fall of 1996, just as it had every year prior to 1996. In the newsletter and the newspaper, the District did not put any notice which stated that although in the past the Board had granted late-filed open enrollment applications, it would no longer do so. Superintendent West testified that the District paid for an ad in the Titonka newspaper in the fall of 1996 which stated the open enrollment application deadlines, and told the public when open enrollment applications had to be filed. The ad, however, did not say there was going to be any change from the past practice of the Board.

The District has a written Board policy, number 501.12, which states that open enrollment applications are to be filed by January 1<sup>st</sup>. The Board policy was adopted September 11, 1995, and was revised September 9, 1996. At the Board meeting on September 9<sup>th</sup> when the Board revised the policy, there was no discussion that the Board’s feeling had changed regarding granting late-filed open enrollment applications. Prior to September 1996, the Board policy stated that applications must be filed by the October 30<sup>th</sup> deadline. There was no exception in the written policy for late-filed applications related to the change in whole-grade sharing partners. Prior to June 1997, Board did not adhere to its written policy.

Superintendent West testified the first time he knew the Board was not going to grant late-filed open enrollment applications was at the Board meeting on June 24, 1997, when the Toenges applications were denied. The Board decided to change its practice on June 24, 1997.

Superintendent West testified that the only reason late-filed applications were received and granted by the Board was because of the whole-grade sharing agreement and the change in whole grade sharing partners.<sup>2</sup> Superintendent West and Mr. Toenges testified that in the past, the District had granted late-filed open enrollment applications for two middle school students, which would not have been related to the change in whole-grade sharing partners. However, both of those applications were later rescinded by these students.

Mr. Toenges testified that Superintendent West's testimony that the previous grant of late-filed applications was due to a change in the whole-grade sharing partners was unclear to him. He testified that until June 1997, there have been no open enrollment requests, in or out of the District, regardless of whether they had been filed late or not, which had been denied. His understanding of the Board's practice was that when someone asked for open enrollment, regardless of the filing date, the request would be approved.

Mr. Toenges stated that it seemed that the Board's position on open enrollment can waiver and turn to whatever fits the situation at the time. Mr. Toenges disputes the statement by Superintendent West and Board Member Heyer that the only reason late-filed open enrollment requests have been granted is related to the whole-grade sharing agreement. Mr. Toenges testified that the community as a whole sees the fact that the Board has never denied an open enrollment request, and the District has never notified the patrons that it would enforce the law.

At the conclusion of the hearing, the panel issued an oral decision to the parties. Subsequent to the hearing, the District sent a letter to the Department of Education requesting that a written decision be issued. This decision is being issued pursuant to that request.

## II.

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<sup>2</sup>The State Board has stated on several occasions that when granting late-filed open enrollment applications, boards should state the particular and unique facts of the situation that prompted the board's approval in the minutes of the board meeting. When they do this, the board will only be obligated to approve future, late-filed open enrollment applications of the same factual nature. In re Melissa J. Van Bommel, 14 D.o.E. App. Dec. 281(1997); In re Shawn and Derrick Swenson, 12 D.o.E. App. Dec. 150(1995). In this case, the Board never stated the reasons it was approving open enrollment applications, whether they were late-filed or not. In addition, the local board needs to have a written policy that reflects its actual practice with regard to late-filed open enrollment applications. Throughout this period of time, the Board's written policy merely stated the deadlines with respect to open enrollment applications. It did not reflect that any exceptions would be granted because of the whole-grade sharing agreement, or for any other reason.

## CONCLUSIONS OF LAW

Review of the Board's decision in this case by the Iowa Department of Education is de novo. In re Debra Miller, 13 D.o.E. App. Dec. 303(1996). The decision must be based on the laws of the United States and the State of Iowa, the regulations and policies of the Department of Education, and must be in the best interest of education. 281 Iowa Administrative Code 6.11(2). Essentially, the test is one of reasonableness. In re Michael J. Pringle, 14 D.o.E. App. Dec. 365 (1997); In re Jesse Bachman, 13 D.o.E. App. Dec. 363(1996).

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 1<sup>st</sup> of the preceding school year. Iowa Code section 282.18(2)(1997).

The legislature recognized that certain events would prevent a parent from meeting the January 1<sup>st</sup> 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 1<sup>st</sup> filing deadline. Iowa Code sections 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 1<sup>st</sup> 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 Iowa Administrative Code 17.4.

The reasons given by the Appellant for filing the open enrollment application do not constitute good cause for the late filing under the law and board rules. 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 bright 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 building was closed and the elementary and middle school grades were realigned, In re Peter and Mike Caspers, et al., 8 D.o.E. App. Dec. 115 (1990); 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).

Although the Toenges do not have good cause for filing their application late, Mr. Toenges makes a compelling argument that his application should be granted. As he stated, the Board granted a number of late-filed applications in the past. Although, as

Superintendent West testified, most of the prior late-filed open enrollment requests were granted because they were related to the change in whole-grade sharing partners, this was

not articulated to the public. Therefore, the public thought, as did at least one Board member, that late-filed open enrollment applications would be granted regardless of the reasons for the applications. This is because the Board never stated the reasons why it was granting late-filed requests at Board meetings or in the Board minutes, and it did not state when exceptions would be granted in its written policy. The community's understanding was that the deadline for open enrollment applications did not matter.

Although the Board had a written policy requiring parents to file applications by the deadlines, the Board did not follow its own policy in prior years. The District published notice of open enrollment deadlines in the newspaper and school newsletters each year, but it also did not adhere to the information published. Therefore, when the Board revised its written policy in September 1996 to change the deadline from October 30<sup>th</sup> to January 1<sup>st</sup> of each year, there was no way for any member of the public to know that the Board would follow this deadline. Also, there was no way for any member of the public to know that the Board would follow the published deadlines in September 1996. Until the vote in the Toenges case in June 1997, no one knew that the Board would change its prior "feeling," and deny the application. The Board itself tabled the Kitzinger application at the June meeting because it wanted to consider whether to apply the denial to that application. Essentially, the Toenges' position is that since the Board granted prior late-filed applications, the Board's action to deny their applications was arbitrary and capricious.

A local school board has the authority to grant late-filed open enrollment applications, and it has the authority to deny them. However, it cannot act arbitrarily or capriciously. See, Iowa Code section 17A.19(8)(g)(1997); In re Dustin Krutsinger, 12 D.o.E. App. Dec. 346(1995); In re Danessa, Jeremiah, and Desiree Black, 11 D.o.E. App. Dec. 338(1994); In re Anthony Schultz, 13 D.o.E. App. Dec. 381(1993).

A school board has the authority to adopt policies and rules for its own governance and that of the district, its students and employees. Iowa Code section 279.8(1997). The only real limitation on the board's power is that the subject matter of the rule must be within the board's authority to govern, and the rule itself must be reasonable. Board v. Green, 259 Iowa 1260, 147 N.W.2d 854(1967). A school board does not have unfettered discretion, and must adopt policies to guide it in the exercise of its discretion. Krutsinger, supra, at 349. There are two reasons for the requirement that a board adopt policies: first, to put the district and all the constituencies on notice as to the board's general views on a given subject so that those entities can govern themselves accordingly, and second, to guide the board in its own decision making. Krutsinger, supra, at 349 (citing In re Anthony Schultz, 9 D.o.E. App. Dec. 381(1992)).

In this case, the Board had a written policy that required filing applications by the open enrollment deadline, either by October 30<sup>th</sup> prior to 1996, or by January 1<sup>st</sup> after September 1996. However, the Board did not follow its own written policy.

Board policies are seldom written in stone and can be amended as easily as they were adopted. Also, because the board creates the policies, it alone has the ability to deviate or make exceptions to the policies when an unanticipated fact situation occurs, or when wisdom would dictate a deviation is necessary. ...

We have no quarrel therefore, with the Board's decisions (at least two of them) to depart from their announced and existing policy on open enrollment and, particularly, late applications. The problem arises because the Board apparently made willy-nilly exceptions to its own policy. ...

However, no record exists of the reason for the departure in that case, so the community is not really on notice as to which of many possible rationales moved the Board to deviate from its policy. Nor was the policy amended after the action was taken.

In re Anthony Schultz, *supra*, at 385.

As in Schultz and Krutsinger, *supra*, at 349, the Board had the power to deviate from its own policy, but it had the obligation to state the facts that warranted such a departure. In that way, a waiver of the late-filing deadline would not be binding on subsequent situations unless they were identical to the fact pattern described by the Board when it deviated from its policy. In re Krutsinger, *supra*, at 349.

In this case, the Board did not state any reason for granting the exceptions to the open enrollment policy when it approved the late-filed applications in the years 1993-1996. Although Superintendent West testified in the Toenges hearing that all of the late-filed open enrollment applications were granted because they were related to the change in the whole-grade sharing agreement, the public had no way to know this. In addition, because the testimony of Superintendent West changed from the Kitzinger hearing to the Toenges hearing, because late-filed applications were granted before the change in whole-grade sharing partners occurred, and because reasons for granting the late-filed applications were never stated in the record, we question whether all late-filed applications were related to the change in whole-grade sharing partners. In addition, although the applications were later withdrawn, the testimony was that two late-filed applications from middle school students were granted by the Board. Therefore, as the Appellant testified, the community's understanding was that all late-filed open enrollment

applications would be granted, since all late-filed open enrollment applications had always been granted in the past. The first time the Board ever took action to deny a late-filed application was in June, well beyond the January 1<sup>st</sup> deadline. Therefore, the denial of the Toenges' open enrollment applications was effectively arbitrary and capricious. In re Schultz, supra; In re Krutsinger, supra.

The term "arbitrary and capricious" means "without regard to established rules or standards." In re Krutsinger, supra, at 349; Churchill Truck Lines , Inc. v. Transp. Regulation Bd., 274 N.W.2d 295, 299-300(Iowa 1979). It implies that the decision was made upon whim, fancy, or some unarticulated preference. Krutsinger, supra, at 349. In this particular case, the apparent reason for the change in the Board's action, was that a new member had been elected to the Board. However, the change in the Board's position occurred in June and July of 1997. This is clearly after the January 1<sup>st</sup> deadline for open enrollment applications.

If a board wishes to change its position regarding late-filed open enrollment applications, it must do so in a manner which is reasonable and provides for sufficient notice to the parents in the District so that they will be able to file their open enrollment applications in a timely manner. This means that boards that have previously granted late-filed open enrollment applications as a matter of policy, practice, or the "feeling of the Board" will need to clearly state in the minutes of a board meeting, and in written notices to the public, that they will no longer grant late-filed open enrollment applications. This action will need to be taken before the January 1<sup>st</sup> deadline, not after it has already passed. This will allow parents to have the opportunity to realize that the board will adhere to the deadlines, and that they must get their applications filed in a timely fashion. We agree with Superintendent West and Dr. Heyer that a previous board cannot necessarily bind the actions of a subsequent board. We also note that a board may change its policy with respect to late-filed open enrollment applications. However, when it does so, it must do so in a manner that is reasonable, not arbitrary and capricious in effect, and which provides adequate notice to the public that it will adhere to the open enrollment deadlines. Adequate notice to the public means allowing sufficient time so parents may file applications by the deadlines.

We assume that the Titonka District will want to formally change its past practice with regard to late-filed open enrollment applications without good cause. If it wishes to do so, the Board should discuss the policy in a public board meeting before January 1<sup>st</sup>. The decision of the Board and the discussion should be reflected in the Board minutes. If the Board will grant exceptions, this should be stated in the policy. In addition, when the Board publishes notice of the open enrollment application deadlines this fall, it should clearly state that the District will no longer allow late-filed open enrollment applications, and parents who wish to open enroll their students must file by the January 1, 1998, deadline. In doing so, the District will provide adequate notice to parents that the District intends to follow the statutory deadlines with respect to the open enrollment law.

Because the Board's decision was effectively arbitrary and capricious and unreasonable because of its timing, the hearing panel recommends that the Board's decision be overturned.

The Toenges' reasons regarding academic concerns, music programming, and harassment are not good cause as defined by the legislature. However, the legislature has granted important authority to the State Board of Education to deal with extraordinary cases. Iowa Code §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 affect child or children.

The Toenges raised the issue of harassment of their children due to the legal difficulties experienced by their father and the local Cooperative. The State Board has used its §282.18(18) authority to allow open enrollment in a harassment case which was filed late. In re Melissa J. Van Bommel, 14 D.o.E. App. Dec. 281(1997). In that decision, the State Board set out a number of guidelines regarding harassment cases that will provide guidance to districts regarding when the State Board will follow Iowa Code §282.18(18)(1997) in late-filed open enrollment cases involving harassment. We have considered the unique situation surrounding the Cooperative's legal battles and the effect this has had on the Toenges' children. However, since we are reversing the District on other grounds, we make no finding whether or not this case comes under the extraordinary authority granted to the State Board of Education under Iowa Code section 282.18(18)(1997).

Iowa Code section 282.18 (4)(1997) and the departmental rules at 281 Iowa Administrative Code 6.11(7) allow the hearing panel and the administrative law judge to issue an oral decision at the conclusion of the hearing. Both parties agreed to this procedure, and an oral decision reversing the District Board's denial of open enrollment was issued at the end of the hearing.

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 Titonka Consolidated School District made on June 24, 1997, which denied the Toenges' late-filed request for open enrollment for their sons for the 1997-98 school year, is hereby reversed. There are no costs of this appeal to be assigned.

\_\_\_\_\_  
DATE

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AMY CHRISTENSEN, J.D.  
ADMINISTRATIVE LAW JUDGE

IT IS SO ORDERED.

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DATE

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TED STILWILL  
DIRECTOR