

**IOWA STATE DEPARTMENT
OF EDUCATION
(Cite 14 D.o.E. App. Dec. 307)**

In re Trevor and Madison Jackson :

James and Sonja Jackson, :
Appellants, :

v. : DECISION

Belmond-Klemme Community :
School District, :
Appellee. :

[Admin. Doc. #3879]

The above-captioned matter was heard telephonically on June 19, 1997, before a hearing panel comprising Mr. Klark Jessen, Office of the Director; Ms. Jane Heinsen, Bureau of Practitioner Preparation & Licensure; and Amy Christensen, designated administrative law judge, presiding. The Appellants, Mr. James and Mrs. Sonja Jackson, were present telephonically and were represented by Mr. John Sorensen. The Appellee, Belmond-Klemme Community School District [hereinafter, "the District"], was present telephonically in the person of Dr. Richard Newkirk, Superintendent, and Ms. Audrey Borcharding, Board Secretary. The District was unrepresented by counsel.

An evidentiary hearing was held pursuant to departmental rules found at 281 Iowa Administrative Code Ch. 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.

The Appellants seek reversal of a decision of the Board of Directors [hereinafter, "the Board"] of the District made on April 14, 1997, which denied their request for open enrollment for their children, Trevor and Madison.

**I.
FINDINGS OF FACT**

Mr. and Mrs. Jackson lived in the town of Klemme, Iowa until approximately three weeks before the hearing. At that time, they moved to an acreage on the edge of the Belmond-Klemme school district approximately six miles from Ventura, Iowa. They purchased the acreage on January 27, 1997. Their acreage is approximately five miles

east and two miles north of Klemme, and is about twenty-one miles from Belmond, Iowa. Both their former residence in Klemme and their acreage are in the Belmond-Klemme School District. Ventura is in the Ventura School District.

The Jacksons have three children: Shelby, age one and a half, Trevor, age four, who will be in preschool next year, and Madison, age six, who will be in first grade¹. Madison attended kindergarten at the Klemme attendance center. The Jacksons filed applications for open enrollment on March 19, 1997. They would like Madison to attend school in Ventura for several reasons. The Jacksons believe it would be in Madison's best interest to attend school in Ventura, and that her attendance in Ventura would allow her to maximize her educational opportunities. At the time they filed their applications, the Jacksons knew they were past the January 1st deadline, but thought they had good cause for the late filing.

The District published a newsletter in November 1996 which listed open enrollment information, including the January 1st deadline. The open enrollment information was on the front page of the newsletter, and was sent to all residents of the District.

The Jacksons moved after the January 1st deadline for filing open enrollment applications, and the main reason for their open enrollment request is the distance from the Jackson's home to the Belmond attendance center. It is approximately twenty-one miles to the Belmond attendance center, and only about six miles to the Ventura school. They believe it is in their children's best interest not to have to travel so far to school. Since the family moved after the January 1st deadline, the Jacksons believe this constitutes good cause for their late-filed application.

At the April 14, 1997 Board meeting, the Belmond-Klemme School Board voted to change grades held in attendance centers in the District beginning with the 1997-98 school year. Prior to this change, the Klemme attendance center had kindergarten, first, seventh, and eighth grade. Beginning in 1997-98, the Klemme attendance center will no longer have kindergarten and first grade, and those children will ride the bus to Belmond for school. The Klemme attendance center will have sixth, seventh, and eighth grades. The Jacksons are not happy the District moved kindergarten and first grade to Belmond, because it means their children will have to ride the bus for a much longer distance than if they attended school in Klemme, and they would be much farther away in case of emergencies. If the Klemme attendance center still had kindergarten and first grade, the Jacksons would not have filed their request for open enrollment. However, they gave

¹ We note that the Jacksons applied for open enrollment for both Trevor and Madison for the 1997-98 school year, and the Board denied both applications. However, Trevor will be in preschool next year. Therefore, since he does not attend kindergarten yet, the open enrollment laws do not apply to him, and this decision will apply only to Madison.

additional reasons for the request for open enrollment. Among them, the Jacksons believe the Belmond-Klemme District has several problems, and they disagree with the District's decision to implement multi-age classrooms. The decision to implement multi-age classrooms was made by the Board after the January 1st open enrollment deadline. Since the Board decisions were made after January 1st, the Jacksons believe this also constitutes good cause for their late filing. Furthermore, the Jacksons believe the Board intentionally delayed taking action on the grade realignment issue until after the January 1st deadline in order to prevent parents from filing applications for open enrollment. As support for this belief, the Jacksons cite to a document drafted by Dr. Newkirk which lists the pros and cons of the realignment, and which states that some students might request open enrollment.

During the 1996-97 school year, the District discussed realignment of grades both before and after January 1st. In March 1997, the District held three hearings seeking input regarding realignment of grades in the District. The three hearings were held in Klemme, Rowan, and Belmond. Many people in the District also expressed opinions regarding the realignment individually to Dr. Newkirk and to the Board members. Dr. Newkirk objected to the interpretation by the Jacksons that the District intentionally delayed voting to prevent parents from open enrolling their children. At the April Board meeting, Dr. Newkirk distributed a document which discussed advantages and disadvantages of the realignment decision. He wrote the document because he wanted people in the community and the Board to understand the implications of making a decision to realign the District. He wanted them to know that for the next year, students in the north part of the District may request open enrollment, and that was one disadvantage of moving kindergarten and first grade to Belmond.

After listening to the testimony from both parties, we find that the District did not intentionally delay voting on the realignment until after January 1st to prevent parents from filing applications for open enrollment.

At the April 14th meeting, the Jacksons presented their reasons for their late-filed application to the Board, but the Board voted to deny the Jacksons' applications for open enrollment because they were filed after the January 1st deadline. At the April 14th meeting, there were several applications for open enrollment. The Jacksons object to the Board's vote on the applications because when the Board voted, it voted on all the applications together in one motion.

II. CONCLUSIONS OF LAW

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 provides that parents must follow certain

minimal requirements, including filing the application for open enrollment by January 1st of the preceding school year. Iowa Code section 282.18(2)(1997). At the time the Open Enrollment Law was written, 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), (4), 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 and before June 30th. 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". They do however, provide additional clarification on two points relevant to this case. 281 Iowa Administrative Code 17.4(3) provides: "A similar set of circumstances related to change in residence of the pupil or change in status of the resident district shall not

include: a. Actions of a board of education in the designation of attendance centers within a school corporation and in the assignment of pupils to such centers as provided by Iowa Code section 279.11.” (Iowa Code section 279.11 states that the Board of each District will determine the number of schools, divide the District into wards or other divisions, and determine the particular school where each student will attend.)

The Jacksons’ position is that the action taken by the Board at the April 14th meeting regarding attendance centers was a school closure, because it closed that particular building to their daughter, and she could no longer attend first grade at the Klemme attendance center. We do not agree. This case falls squarely within 281 IAC 17.4(3), which specifically provides that designation of attendance centers within the district and assignment of pupils to those attendance centers is not “good cause”. Furthermore, the statute and rules provide that permanent closure of a nonpublic school is good cause, not closure of a public school. Iowa Code section 282.18(16)(1997); 281 IAC 17.4; *In re Peter and Mike Caspers, et al.*, 8 D.o.E. App. Dec. 115(1990).

The second rule of the department which clarifies an issue in this case is 281 IAC 17.4(1). The Jacksons argue that because they changed their residence after January 1st, this constitutes “good cause” for their late-filed application. However, their change of residence occurred within the district, as both the new and the old house are in the Belmond-Klemme District. The Iowa Code does not specifically state that good cause involving a change of residence must be a change of residence from one district to another. Iowa Code 282.18(16)(1997). However, rule 281 IAC 17.4(1) states that good cause related to a change in a pupil’s residence is a “change in the family residence due to the family’s moving from the district of residence” (emphasis added) from January 1st to June 30th. Furthermore, the Board previously ruled that a change of residence within a district is not good cause for late filing. *In re Justin Michael Herrera*, 11 D.o.E. App. Dec. 144(1994). Therefore, the fact that the Jacksons moved within the District after January 1st does not constitute good cause for their late-filed application.

The Jacksons gave several other reasons for their application 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. 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).

In this case, as in the others, we are not being critical of the Jackson's reasons for wanting open enrollment. However, the reasons 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 section 282.18(16)(1997); 281 IAC 17.4.

The Jacksons urge us to exercise discretion and allow Madison to open enroll to Ventura, which they believe will be in Madison's best interest, pursuant to Iowa Code section 282.18(18)(1997). The State Board has been reluctant to exercise its subsection (18) authority absent extraordinary circumstances. *In re Crysta Fournier*, 13 D.o.E. App. Dec. 106(1996); *In re Paul Farmer*, 10 D.o.E. App. Dec. 299(1993). This case is not one which is of such unique proportions that justice and fairness require the State Board to overlook the regular statutory procedures. *See Fournier, supra*; Iowa Code §282.18(18)(1997). This is particularly true when the main reason given for the late filing is specifically stated not to be good cause in the department's rules.

The Jacksons objected to the fact that the Board ruled on several applications for open enrollment in one motion at the Board meeting on April 14th. We fail to see that the Board violated any requirement in doing so, or acted unfairly to the Jacksons.

In this case, we see no error in the decision of the Board of the District. The Board's decision was consistent with state law and the rules of the Iowa Department of Education. Therefore, there are no grounds to justify reversing the District Board's denial of the open enrollment application.

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 Belmond-Klemme School District made on April 14, 1997, which denied the Jacksons' late-filed request for open enrollment for Madison to attend school in Ventura 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

TED STILWILL, DIRECTOR
STATE DEPARTMENT OF EDUCATION