

**IOWA STATE DEPARTMENT
OF EDUCATION
(Cite as 14 D.o.E. App. Dec. 259)**

In re David Brannan :

Richard and Theresa Brannan, :
Appellants, :

v. : DECISION

Saydel Consolidated School :
District, :
Appellee. :

[Admin. Doc. #3881]

The above-captioned matter was heard telephonically on June 18, 1997 before a hearing panel comprising Ms. Diana Billhorn, Bureau of Special Education; Ms. Donna Eggleston, Office of Educational Services for Children, Families, and Communities; and Amy Christensen, J.D., designated administrative law judge, presiding. The Appellant, Mrs. Teresa Brannan, was present telephonically and was unrepresented by counsel. The Appellee, Saydel Consolidated School District [hereinafter, "the District"], was present telephonically in the person of Dr. David Arnold, Superintendent. The District was also *pro se*.

An evidentiary hearing was held pursuant to Department of Education rules found at 281 Iowa Administrative Code 6. The authority and jurisdiction for this appeal are found at Iowa Code sections 282.18(4) and 290.1(1997). The administrative law judge finds that she and the director of the Department of Education have jurisdiction over the parties and subject matter of the appeal before them.

The Brannans seek reversal of a decision of the Board of Directors [hereinafter, "the Board"] of the District made on April 21, 1997, which denied their application for open enrollment out of the District for their son, beginning in the 1997-98 school year.

During the hearing, the District was directed to send a certified copy of the minutes of the April 21, 1997 Board meeting to the Department with a copy to the Appellants. The District hand delivered the certified copy to the Department on the same day the hearing was held.

I. FINDINGS OF FACT

Mr. and Mrs. Brannan have a son, David, who will be in the 4th grade during the 1997-98 school year. The Brannans live in the Saydel District. They would like to open enroll David into the Des Moines District's home instruction program for the 1997-98 school year. The Brannans filed their application for open enrollment for David after the January 1, 1997, deadline.

The Brannans moved to Iowa and the Saydel District in 1991. They home schooled David through the Saydel District until about two years ago. At that time, they enrolled David in the Ankeny Christian Academy.

In October 1996, Mr. Brannan left his former employment to open a restaurant in Ankeny. In February 1997, Mrs. Brannan voluntarily left her former employment to help her husband with the restaurant. Therefore, the family lost its former steady income and has suffered financial difficulties. The restaurant is new, and therefore, is not yet financially sound. Mr. and Mrs. Brannan can no longer afford to send David to Ankeny Christian Academy. David finished the school year at Ankeny Christian, although the Brannans were unable to pay his tuition and still owe the school for tuition.

Since they are unable to afford to send David to Ankeny Christian, Mrs. Brannan will home school him during the 1997-98 school year. Mrs. Brannan is currently working at the restaurant. During the 1997-98 school year, she will only work at the restaurant on an on-call basis so she can home school David.

The Brannans would like to open enroll to the Des Moines District because Mrs. Brannan would like to team teach with another mother who home schools her child through the Des Moines District's home instruction program. The Des Moines home instruction program has scheduled activities for the students in the program, which Mrs. Brannan believes would benefit David, and she and the other mother would like to share transportation to those activities. The other student is a friend of David's. Mrs. Brannan is aware of the restrictions in the law which allow only a parent or a certified teacher to instruct home schooled students. Neither mother is a certified teacher. Mrs. Brannan testified the mothers would only oversee seat work of each other's children if one of them had to be gone, and she would not initiate or teach lessons for the other child.

Mrs. Brannan has no problem with the Saydel home instruction program. She believes David would benefit from the Des Moines program, and it would be convenient for both mothers to assist each other with transportation and supervision.

The District denied the Brannans' application for open enrollment on the basis that it was filed after the deadline and there were no grounds for the good cause exception. This decision was made at the April 21, 1997, Board Meeting.

The Brannans then filed this appeal.

II. CONCLUSIONS OF LAW

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". 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.

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 Brannans' reasons for wanting open enrollment. We sympathize with the Brannans' financial difficulties. While it is true Mrs. Brannan left her job after the January deadline, she did so voluntarily. We also agree with Mrs. Brannan that participation in the Des Moines home instruction program would probably benefit David. Clearly it would be more convenient for the Brannans to share transportation and supervision, and it would be more fun for David to study with a friend. 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". Finally, this is not a case that cries out for extraordinary exercise of power bestowed upon the State Board. It is not a case of such unique proportions that justice

and fairness require the State Board to overlook the regular statutory procedures. *See* Iowa Code §282.18(18)(1997). The Brannans have the option of home schooling David through the Saydel District, or sending him to Saydel public school.

The fact that the Brannans do not have good cause according to the statute does not mean that they do not have a good reason for missing the filing deadline. It is unfortunate that Mrs. Brannan's leaving her employment to help establish the family's restaurant, and the restaurant's financial difficulties occurred after January 1, 1997. However, the fact that the Brannans may have had a good reason for missing the deadline does not mean that they met the good cause requirement of the statute. Statutory good cause is defined by the legislature in the Code of Iowa. The legislature did not give individual school districts or the Iowa Department of Education unfettered discretion to decide what "good cause" means. In this case, even though the Brannans had a good reason for missing the deadline, their reason does not qualify as good cause under the statute. Iowa Code §282.18(16)(1997); 281 Iowa Administrative Code 17.4.

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 for David Brannan.

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 Saydel Consolidated School District made on April 21, 1997, which denied the Brannans' late-filed request for open enrollment for David to attend the Des Moines Independent Community School District's home instruction program 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
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It is so ordered.

DATE	TED STILWILL, DIRECTOR STATE DEPARTMENT OF EDUCATION
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