

**IOWA STATE BOARD
OF EDUCATION
(Cite as 14 D.o.E. App. Dec. 253)**

In re Jeremiah Simms-Davis	:	
Carol Simms-Davis., Appellant,	:	
v.	:	DECISION
Des Moines Independent Community School District, Appellee.	:	

[Admin. Doc. #3888]

The above-captioned matter was heard telephonically on June 16, 1997 before a hearing panel comprising Ms. Charlotte Burt, consultant, Bureau of Special Education; Ms. Evelyn Anderson., consultant, Bureau of Community Colleges and Workforce Preparation; and Amy Christensen, J.D., designated administrative law judge, presiding. The Appellant, Ms. Carol Simms-Davis, 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 for Student Services. The District was also *pro se*.

An evidentiary hearing was held pursuant to Department 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 consolidated appeals before them.

The Appellant seeks reversal of a decision of the Board of Directors [hereinafter, "the Board"] of the District made on May 20, 1997, which denied her application for open enrollment out of the District for her son, beginning in the 1997-98 school year.

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**I.
FINDINGS OF FACT**

Ms. Carol Simms-Davis has a son, Jeremiah, who will be in the 9th grade during the 1997-98 school year. The Simms-Davises live in the Des Moines Independent Community School District. If he attends Des Moines public schools next year, Jeremiah will attend Hoover High School.

Until he was in the 7th grade, Jeremiah attended private Christian schools. In the 7th grade, Jeremiah attended Meredith Middle School in the Des Moines system. However, Jeremiah did not do well at Meredith because he could not handle the differences between the Christian school he had been attending and Meredith Middle School. Many of his problems stemmed from the attitudes of his fellow students. For example, Jeremiah had never been in any fights at school, and he got into a fight at Meredith. At one point, his mother testified that he had to testify in a sexual harassment case at the school between two students. Jeremiah's mother also testified he was not used to the cursing which occurred at school.

Jeremiah began Meredith Middle School with a friend from the Christian school. Both students experienced difficulty with the transition. The mother of Jeremiah's friend pulled him out of Meredith Middle School and homeschooled him because of the difficulties. Jeremiah's mother, on the other hand, thought it would be best for Jeremiah to ride out the difficulties and try to adjust to Meredith. However, she now regrets letting Jeremiah stay at Meredith for a year. She testified he experienced considerable suffering at Meredith. Therefore, Ms. Simms-Davis homeschooled Jeremiah during 8th grade.

Ms. Simms-Davis believes that the Johnston Community School District would be more compatible with Jeremiah's prior experiences in the Christian school, and she would like to open enroll him to the Johnston High School beginning in 9th grade. Ms. Simms-Davis filed her application for open enroll with the District on May 14, 1997. She did not know that she had to request open enrollment until the homeschool teacher assisting her told her of the requirement. She realized at the time she filed for open enrollment that the request was filed after the cutoff date of January 1st. However, she did not learn of the open enrollment deadline until her discussion with the homeschool teacher. Ms. Simms-Davis also testified that the homeschool teacher told her the open enrollment deadline was not very well known.

The Des Moines District publishes notice of the open enrollment policy and deadline in the Des Moines Register in September of each year. It also publicizes the open enrollment deadline in letters which are sent home to all students in the District in September. As a parent who was homeschooling her child, Ms. Simms-Davis should have received a letter containing this notification, because homeschooled students also receive this newsletters. The newsletters are sent to parents both in September and October of each year. Ms. Simms-Davis testified she did not receive any notification by the District, and she does not take the Des Moines Register, so she did not see the notification in the newspaper.

The District denied Ms. Simms-Davis' application for open enrollment on the basis that it was filed late and there were no grounds for the good cause exception. This decision was made at the May 20, 1997, Board Meeting.

Ms. Simms-Davis 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 primary 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 section 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 a 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, failure of negotiations of wholegrade sharing, reorganization, dissolution of agreement, or the rejection of a current wholegrade 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, our rules do not expand the types of events that would constitute “good cause”. The State Board has chosen to review, on appeal only, potentially “similar sets of circumstances” on a case-by-case basis. 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); nor because the school was perceived as having a “bad atmosphere”, In re Ben Tiller, 10 D.o.E. App. Dec. 18(1993); nor 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); nor 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); even when those 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 Candy 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 Appellant’s reasons for wanting open enrollment. We sympathize with her and her son in the difficulties he has experienced at Meredith Middle School. However, the reasons she gives for not filing the application by the deadline, that she did not know that there was a deadline and had not received notice of that deadline, do not meet the “good cause” definition. Nor does this constitute a “similar set of circumstances consistent with the definition of good cause”. Finally, we fail to recognize that the situation is one that “cries out for” extraordinary exercise of power bestowed upon the State Board. This 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).

Good cause under the law does not mean that the parent did not have a good reason for missing the filing deadline. It is unfortunate that Ms. Simms-Davis did not see any of the information informing her of the open enrollment deadlines which were published by the Des Moines Independent Community School District. However, the fact that Ms. Simms-Davis had a good reason for missing the deadline does not mean that she 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 Ms. Simms-Davis did not know of the open enrollment requirements by the deadline, and therefore may have had a good reason for missing the deadline, her reason

does not qualify as good cause under the statute. Iowa Code §282.18(16)(1997); 281—Iowa Administrative Code 17.4.

Iowa Department of Education Rule 281—Iowa Administrative Code 17.3(2) states:

By September 30th of each school year, the districts shall notify parents of open enrollment deadlines and transportation assistance for open enrollment pupils. This notification may be published in a school newsletter, a newspaper of general circulation, or a parent handbook provided to all patrons of the district.

In this case, the Des Moines District published notice in a school newsletter by September 30th and sent that newsletter to all parents in the District. The newsletter is sent to parents who homeschool their children. The Des Moines District also published notice of the deadlines in the *Des Moines Register*, which is a newspaper of general circulation in the District. Therefore, we find that the Des Moines District complied with the provisions in 281—Iowa Administrative Code 17.3(2) regarding notification. The District is not responsible for making sure that every parent in the District actually receives the notice, and actually reads it even if it is sent.

This case falls within the precedent established by In re Candy Sue Crane, 8 D.o.E. App. Dec. 198(1990) and In re Nathan Vermeer, 14 D.o.E. App. Dec. 83(1997). In those cases the Iowa Department of Education refused to reverse denials of late applications due to ignorance of the filing deadlines by the parents. In this case, we see no error in the decision of the Board of the District. The Board's decision was consistent with the 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 Jeremiah Simms-Davis.

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 May 20, 1997, denying the Appellant's untimely-filed request for open enrollment for Jeremiah Simms-Davis to attend Johnston Community School District for the 1997-98 school year is hereby recommended for affirmance. There are no costs to this appeal to be assigned.

DATE

AMY CHRISTENSEN, J.D.
ADMINISTRATIVE LAW JUDGE

It is so ordered.

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DATE

TED STILWILL, DIRECTOR
STATE DEPARTMENT OF EDUCATION