

**IOWA STATE BOARD
OF EDUCATION
(Cite as 14 D.o.E. App. Dec. 115)**

In re Michael Andrews	:	
Carolyn Toyne, Appellant,	:	
v.	:	PROPOSED DECISION
College Community School District, Appellee.	:	

[Admin. Doc. #3873]

The above-captioned matter was heard telephonically on April 18, 1997 before a hearing panel comprising Mr. Klark Jessen, consultant, Office of the Director; Ms. Christine Anders, consultant, Bureau of Food and Nutrition; and Amy Christensen, designated administrative law judge, presiding. The Appellant, Ms. Carolyn Toyne, was present telephonically and was unrepresented by counsel. The Appellee, College Community School District [hereinafter, "the District"], was also present telephonically in the persons of Dr. Mick Starcevich, Superintendent, and Mr. James Steffen, Board Secretary. The District was 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 Appellant seeks reversal of a decision of the Board of Directors [hereinafter, "the Board"] of the District made on February 17, 1997, which denied her application for open enrollment into the District for her grandson, Michael Andrews, for the 1996-97 school year.

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.

**I.
FINDINGS OF FACT**

Ms. Carolyn Toyne, maternal grandmother of Michael Andrews, lives in the Cedar Rapids Community School District. Michael's mother also lives in the Cedar

Rapids District. Prior to being placed in the Four Oaks Treatment Center, Michael was a student in the Vinton-Shellsburg Community School District.

Michael was placed in the Four Oaks Treatment Center program in October 1995 by court order. Four Oaks is a residential care and treatment facility for children with emotional/psychological problems. The Four Oaks Treatment Center is in the College Community School District. While at Four Oaks, Michael has been a regular student in the District. During the 1995-96 school year, Michael attended elementary school in the District. During the 1996-97 school year, Michael has attended the local middle school, Prairie Middle School, which is also in the District. Michael is a sixth grader.

In December of 1996, Ms. Toyne was informed by their DHS caseworker that they were going to release Michael from Four Oaks. The caseworker asked Ms. Toyne whether she would be willing to take Michael on a temporary basis. They discussed keeping Michael in the College Community District so there would be no disruption of his schooling and he would be in a stable environment.

Ms. Toyne contacted the Cedar Rapids School District in December 1996 regarding the process to keep Michael in the College Community District school. The Cedar Rapids District told her open enrollment should not be a problem.

On January 10, 1997, they went to Court, and the Court placed Michael with Ms. Toyne for approximately six months. Therefore, Ms. Toyne filed an application for open enrollment for Michael with the Cedar Rapids School District on January 13, 1997. She requested open enrollment to the Prairie Middle School in the College Community District for the remainder of the 1996-97 school year.

It is likely Michael will be placed with his mother and siblings before the beginning of the 1997-98 school year, and his mother will enroll him in the Cedar Rapids District. Even if Ms. Toyne retains custody, she intends to have Michael attend school in the Cedar Rapids District with his three siblings beginning with the 1997-98 school year.

On the open enrollment application, Ms. Toyne checked “no” to question 11, “Is the request made due to the parent or guardian changing district of residence and desiring that the pupil remain in the original district with no interruption in the education program?” In her answer to question 17, Ms. Toyne stated that she had good cause to justify the late application related to a change in the pupil’s residence, and stated “Child at Four Oaks in College Community District. Has been Court ordered to reside at grandmother’s home in Cedar Rapids District.”

The Cedar Rapids District approved the application on February 10, 1997, and sent it to the College Community District. College Community denied the application on February 17, 1997.

The College Community District has an open enrollment cap in place pursuant to its Insufficient Classroom Space policy adopted July 18, 1989, and revised on March 21, 1994 and November 20, 1995. The Policy sets a cap on the number of students per grade level each year. The cap on the number of students in sixth grade for the 1996-97 school year is 224. The number of students actually in the sixth grade for the 1996-97 school year is 227. Michael was counted as one of those 227 students, since he was a student in September 1996. Therefore, for the 1996-97 school year, sixth grade was capped to open enrollment due to insufficient classroom space. If there is space for some open enrollment students in a grade level, and there are more applications than spaces, students are first admitted by continuation of educational program, then by sibling preference, and then by date the application was submitted to the sending district.

On the denial of open enrollment form, the District stated that Michael was never a resident pupil as the reason for the denial. During the hearing, it became clear that prior to consideration of the residency issue, the District first denied the application for insufficient classroom space pursuant to its policy. Since the District denied the application for insufficient classroom space, it then went on to consider whether Ms. Toyne's application should be granted as a continuation of educational programming for pupils who had moved out of the district. The District decided that Michael had never been a resident of the District; therefore, the continuation of educational programming without interruption should not apply; therefore, it denied the application for open enrollment.

Since Michael was a regular education student, the District received funding for him during the time he was at Four Oaks. Once Michael left Four Oaks, the District no longer receives funding for him.

Ms. Toyne filed notice of appeal of the denial of open enrollment to the State Board of Education on March 10, 1997.

Michael has continued to attend Prairie Middle School in the College Community District pending the decision in this case. The College Community District will allow Michael to complete the 1996-97 school year at Prairie Middle School regardless of the decision in this case. The District recognizes this would be in Michael's best interest.

The District regards this appeal by Ms. Toyne as a "friendly appeal", and it was taken so the District could have the questions raised in the appeal answered. The District raised a number of questions regarding application of open enrollment law during the hearing which were not based on the facts in this case.

II. CONCLUSIONS OF LAW

Since the District has wisely agreed to allow Michael to remain in the District for the remainder of the 1996-97 school year, and Ms. Toyne has agreed that she will not seek open enrollment for Michael for any future years, the issue in this case could be viewed as moot, and the Department of Education could dismiss the case without rendering a decision. However, the parties devoted time and effort to bringing their case to the Department, and the hearing has been held. Therefore, we will issue a decision regarding the facts in this case.

The District raised a number of questions during the hearing regarding applicability of open enrollment law to fact patterns different from Michael's. Specifically, the District is concerned about the effect of the decision in this case on special education students from Four Oaks, and on children in a homeless shelter in the District. We specifically do not make any findings as to those situations. The considerations as to special education and/or homeless children who enter and leave the District may well be different than those applicable to Michael. The District also had questions regarding the effect of this decision on future school years if Ms. Toyne changed her mind and asked that Michael be allowed to stay in the District, and if Michael's siblings wanted to enroll in the District. We make no findings regarding the requirements on the District in those situations since they do not exist in this case. This decision is made as to the specific fact pattern present in this case.

If the District has questions regarding the applicability of open enrollment law to other situations, it does not need to wait for a parent or grandparent to appeal its decision in a specific case. The District could submit a request for a declaratory ruling to the Department pursuant to Iowa Code section 17A.9(1997) and departmental rules at 281 IAC Chapter 3. It is recommended that the District seek the assistance of its attorney in deciding whether to pursue this option and in formulating the request.

Parents (or a grandparent with custody as in this case) may open enroll their students into another district if they follow the procedures contained in Iowa Code sec. 282.18(1997). One of those requirements is to file the application by January 1 of the prior year, unless statutory "good cause" for the late application exists. Iowa Code sec. 282.18(2) and (16)(1997). In this case, Ms. Toyne filed her application as soon as she received custody from the Court, which admittedly was well beyond the deadline of January 1, 1996. "Good cause" for a late application exists in limited circumstances set forth in sec. 282.18(16). It includes circumstances such as Michael's, where his residence changed due to court placement with his grandmother. Therefore, Ms. Toyne had "good cause" for filing a late application, and it had to be considered as if the deadline had been met. Iowa Code 282.18(2)(1997).

Since “good cause” existed, the Cedar Rapids District correctly granted Ms. Toyne’s application for open enrollment out of the district. Id.

If an application for open enrollment is timely filed, or good cause for late filing exists, and the sending district approves the application, there are five reasons a receiving district may deny the application. The first is if there is insufficient classroom space, and the Board has adopted and followed a written policy defining insufficient classroom space for the district. Iowa Code sections 282.18(2) and (11)(1997); 281 IAC 17.4 and 17.6. The second is when a district has a desegregation plan or order, has adopted and followed a policy containing objective criteria for determining when a request would adversely impact the desegregation plan or order, and the superintendent finds that enrollment would adversely affect the district’s implementation of the desegregation plan or order. Iowa Code sections 282.18(3) and (12)(1997); 281 IAC 17.4 and 17.6. The third is when the student has been suspended or expelled and not reinstated in the sending district. Iowa Code 282.18(14)(1997); 281 IAC 17.8. The fourth is if the child requires special education programming which is not offered in the receiving district. Iowa Code section 282.18(8)(1997). The fifth is when the receiving district is a laboratory school as described in Iowa Code chapter 265. A lab school may deny an open enrollment application as the receiving district and the denial is not subject to an appeal under Iowa Code section 290.1. Iowa Code section 282.18(15)(1997). See, also, In re Jason Beebe, 14 D.o.E. App. Dec. 96 (1997).

In this case, the College Community District had insufficient classroom space for the sixth grade during the 1996-97 school year, and it correctly denied Ms. Toyne’s application on that basis. Although it is unfortunate the District did not mark this on the denial form so its reasons would have been clear when it issued the denial, we see no point in rigidly following the form as marked by the District when it is clear from testimony that insufficient classroom space was one reason for the denial.

The legislature has provided for one situation which takes an open enrollment request outside the normal requirements for filing by the deadlines or having good cause, and the ability of a receiving district to deny the application for insufficient classroom space, adverse impact on a desegregation plan, or that the student is expelled. Iowa Code 282.18(9)(1997). This section states as follows:

...If a request to transfer is due to a change in family residence, change in the state in which the family residence is located, a change in the 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, and the child, who is the subject of the request, is not currently using any provision of open enrollment, the parent or guardian of the child shall have

the option to have the child remain in the child's original district of residence under open enrollment with no interruption in the child's educational program. ...

In this case, Michael was not using any provision of open enrollment when he was at Four Oaks and a student in the College Community District, because he was court - ordered into the residential treatment facility. His request for open enrollment was due to his subsequent court ordered placement with his grandmother, who lives in the Cedar Rapids District. By the terms of section 282.18(9), Michael's grandmother, Ms. Toyne, had the option to have Michael remain in his original district of residence under open enrollment with no interruption in his educational program.

Therefore, the District was correct when it recognized Ms. Toyne may have had a right to have Michael remain in the District even though sixth grade was closed to open enrollment due to insufficient classroom space. [We note that question 11 on the application form contains only part of the above statutory reason allowed for continuation of the educational program. Therefore Ms. Toyne's answering "no" on the form to question 11 is irrelevant.]

The question the District raises is whether Michael was a resident of the College Community District when he was at Four Oaks Treatment Center, and thus when Ms. Toyne has the option to have Michael remain in his "original district of residence", does this mean the College Community District?

Iowa Code sec. 282.1(1997) defines the term "resident" for school attendance and tuition purposes. It states, "For purposes of this section, 'resident' means a child who is physically present in a district, whose residence has not been established in another district by operation of law, and who meets any of the following conditions: 1. Is in the district for the purpose of making a home and not solely for school purposes. 2. Meets the definitional requirements of the term 'homeless individual' under 42 U.S.C. sec. 11302(a) and (c). 3. Lives in a juvenile detention center, foster care facility, or residential facility in the district." (emphasis added).

While he was living at Four Oaks, Michael was physically present in the District. He was court ordered into Four Oaks and was required by the Court to live there. In order to change where he lived, a subsequent court order was issued. Therefore, his residence was not established with his mother or grandmother in another district by operation of law. Four Oaks is a residential facility in the District, and Michael was living there. Therefore, Michael was a resident of the District while he was living at Four Oaks. Iowa Code sec. 282.1(1997).

The definition contained at 282.1(1997) is consistent with a line of cases, a declaratory ruling by the Department of Education, and Iowa Attorney General opinions. Although they were issued prior to the addition of the definition of “resident” to the statute in 1989, and prior to the open enrollment statute, they would also have defined Michael as a resident of the District. The key issues were 1) Does the child live within the district, and 2) Is the child in the district for a primary purpose other than school attendance? School Tp. 76 of Muscatine County v. Nicholson, 288 N.W. 123 (Iowa 1939); Salem Ind. Sch. Dist. v. Kiel, 221 N.W. 519 (Iowa 1928); Mt. Hope School Dist. v. Hendrickson, 197 N.W. 47 (Iowa 1924); Op. Attorney General January 10, 1969, March 6, 1957, September 3, 1946, July 12, 1933, February 11, 1929; In re Michelle & Denise Oshel, 2 D.P.I. App. Dec. 236; Declaratory Ruling #33, 1 D.P.I. Dec. Rul 80.

Since Michael was a resident of College Community School District while he was a resident of the Four Oaks Treatment Center, Ms. Toyne had the option to have Michael remain in the College Community District under open enrollment with no interruption in his educational program. Iowa Code sec. 282.18(9)(1997).

III. DECISION

For the foregoing reasons, the decision of the Board of Directors of the College Community School District made on February 17, 1997, which denied Ms. Toyne’s request for open enrollment for her grandson into the District for the 1996-97 school year, is hereby recommended for reversal. 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	CORINE HADLEY, PRESIDENT STATE BOARD OF EDUCATION
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