IOWA STATE BOARD
OF EDUCATION
(Cite as 14 D.o.E. App. Dec. 96)

In re Jason Beebe	:	
Vicki L. Beebe, Appellant,	:	
		PROPOSED
v.	:	DECISION
Atlantic Community School District,	:	
Appellee.	:	
		[Admin. Doc. #3798]

The above-captioned matter was heard on August 29, 1996, before a hearing panel comprising Mary Wiberg, Bureau of Technical and Vocational Education; Diana Billhorn,, Bureau of Special Education; and Ann Marie Brick, J.D., legal consultant and designated administrative law judge, presiding. The Appellant, Vicki Beebe, was "present" telephonically, unrepresented by counsel. The Appellee, Atlantic Community School District [hereinafter, "the District"], was also "present" telephonically in the persons of Interim Superintendent Glenn Binfield, also *pro se*.

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 section 290.1(1997).

The Appellant seeks reversal of a decision of the Board of Directors [hereinafter, "the Board"] of the District made on June 11, 1996, which denied Appellant's application for open enrollment into the Atlantic Community School District, the ***receiving district***. The denial of Appellant's application by the District was based upon the fact that it was untimely filed.

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

Jason Beebe is currently attending 12th grade in Atlantic Community School District. Until the 1996-97 school year, he had attended in Griswold Community School

District, where his mother lives. Jason has been receiving special education services for his behavior disorder for some time.

On April 22, 1996, Jason was an 11th grade student in the Griswold Community School District. A teacher saw Jason spit while standing in the bus line. The teacher said, "That will be a detention!" Jason responded, "What? Just for spitting?" The teacher then said, "That will be TWO detentions." It is not entirely clear how matters escalated from that point but during the time the teacher was trying to escort an uncooperative Jason back into school, she suffered a broken arm and Jason suffered a broken nose. As a result, Jason completed the 11th grade in a homebound program, and the teacher filed assault charges against Jason.

Shortly after that, the Griswold District Board approved Appellant's late application for open enrollment to the Atlantic District.[1] The application was approved by Griswold, the sending district, on May 28, 1996. Appellant's application was denied by the receiving district, Atlantic, on June 11, 1996.

In July 1996, Glenn Binfield was appointed Interim Superintendent of the Atlantic District. He testified at the hearing that the reason given by the Board for denying Jason's application was because it was late. He volunteered that he knew that wasn't the only reason. "The altercation with the teacher probably had as much to do with it as anything." Upon further questioning from the hearing panel, Superintendent Binfield testified that the District had accepted late applications from sending districts in the past; the District had sufficient classroom space in the regular classroom as well as in the special education program to accommodate Jason; and the Atlantic District does not have any type of desegregation plan to consider.

Both Ms. Beebe and Superintendent Binfield, however, agreed that Jason needed a fresh start and that the Atlantic District was the best place for him. To the District's credit, they did, in fact, take Jason and agreed to accommodate his needs. At the time of the hearing, Jason had already settled into school and had had no problems in the Atlantic District.

At this point in the hearing, the ALJ asked the parties why they were pursuing this appeal if Jason was already being served in the Atlantic Community School District. Superintendent Binfield stated that he had been the District's Business Officer until his ap-

[1] **Under the provisions of the Open Enrollment Law, if an open enrollment request is filed for a child receiving special education services, "the request to transfer to the other district shall only be granted if the receiving district maintains a special education instructional program which is appropriate to meet the child's educational needs and the enrollment of the child in the receiving district's program would not cause the size of the class in that special education instructional program in the receiving district to exceed the maximum class size in rules adopted by the State Board of Education for that program. For a child requiring special education, the Board of Directors of the district of residence shall pay to the receiving district the actual costs incurred in providing the appropriate special education." Iowa Code section 282.18(9)(1995).**

pointment as Interim Superintendent. He knew that if Jason attended Atlantic under open enrollment, the District would be reimbursed for his special education program costs this year, instead of next. See, 281—IAC 17.11, which provides in part that "[t]he district of residence shall pay to the receiving district on a quarterly basis the actual costs incurred by the receiving district in providing the appropriate special education program." This rule applies to special education students under open enrollment only. The purpose of the rule is to reduce the burden on receiving districts for special education costs which will not be reimbursed until the following year.

II.
CONCLUSIONS OF LAW

The issue raised in this appeal is whether a **receiving district** is required to approve an open enrollment application when the application has been filed late without good cause, has been approved by the sending district but the receiving district does not want to approve the application?

The Iowa Open Enrollment Law creates a right for parents to leave their residential school district if their requests are filed in a timely manner. At the time that this appeal arose, the applicable deadline was October 30th of the year preceding the school year for which open enrollment was sought. Iowa Code section 282.18(2)(1995).[2]
If an application for open enrollment is timely-filed, or "good cause" for late filing exists, and the sending district approves the application, the receiving district may not deny the application unless one of the following conditions exist:

1. 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 (13); 281—IAC 17.4 and 17.6.

2. 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 its desegregation plan or order. Iowa Code sections 282.18(4) and (14)(1995); 281—IAC 17.4 and 17.6.

3. When the student has been suspended or expelled and not reinstated in the sending district. Iowa Code section 282.18(16)(1995); 281—IAC 17.8.

[2] **The Legislature changed the deadline for open enrollment from October 30th to January 1st of the preceding year. See, 96 Acts, ch. 1157, section 1.**

4. If the child requires special education programming which is not offered in the receiving district. Iowa Code section 282.18(9)(1995).

5. If a laboratory school as described in Iowa Code chapter 265, 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(17)(1995).

None of the above conditions exist in the present case. But the issue remains, must the receiving district accept an untimely application in the absence of those five conclusions? We conclude the answer is "no." When the application is filed past the deadline date and no statutory "good cause" exists for the late filing, the sending district *may* grant or deny the request – and so *may* the receiving district. This conclusion is supportable on practical as well as legal grounds.

The State Board has expressed its belief in the past that the Legislature's purpose for imposing a deadline for open enrollment in the year preceding the student's departure is "primarily related to district financial planning." In re Michaela and Melissa Lippke, 9 D.o.E. App. Dec. 230, 231-32(1992). The method of financing the cost of educating an open enrolled student is outlined in the Department of Education's rules. See, 281—IAC 17.10. Specifically, these rules discuss the method of finance for *late transfers* as follows:

> The resident district and the receiving district boards by mutual agreement may effectuate the transfer of an open enrollment pupil at any time following receipt of a petition for transfer **which is approved by the two boards**. If this transfer is made after the third Friday in September, the resident district is not required to pay per-pupil costs or applicable weighing or special education costs to the receiving district until the first full year of the open enrollment transfer.

281—IAC 17.10(7)(Emphasis added.).

In addition to the financial impracticalities of forcing a recalcitrant receiving district to accept a late-filed open enrolled student, there are educational considerations as well. Although it appears undisputed that under the facts of the present appeal, Jason Beebe is educationally better off in the Atlantic Community School District, that may not always be the main consideration. It is not unforeseeable that if the State Board rules that receiving districts are required to take late-filed open enrolled students approved by the sending districts, some districts might encourage the parents of "bad actors" to open enroll to another district as an alternative to providing for these students in their home dis-

tricts. It would not be difficult to convince a parent that a child having difficulty in district A might be better served by starting over in district B and encouraging the parent to open enroll to that district – even if it's after the deadline. Although the Legislature has not specifically addressed this issue, we believe this result can be necessarily implied from the provisions the Legislature has made for open enrollment requests.

Any motions or objections not previously ruled upon are hereby overruled and denied.

III.
DECISION

For the foregoing reasons, the decision of the Board of Directors of the Atlantic Community School District made on June 11, 1996, which denied Appellant's late request for open enrollment for her son, Jason Beebe, is hereby recommended for affirmance. There are no costs of this appeal to be assigned.

_____ _____

DATE

ANN MARIE BRICK, J.D.
ADMINISTRATIVE LAW JUDGE

It is so ordered.

_____ _____

DATE

CORINE HADLEY, PRESIDENT
STATE BOARD OF EDUCATION