

IOWA STATE BOARD
OF EDUCATION
(Cite as 14 D.o.E. App. Dec. 70)

In re Lucas, Virginia, Christin, :
Cody, Joey, Manuel and Ronald Kelm :

Brian & Julie Kelm, :
Appellants, :

v. : DECISION

Albert City-Truesdale Community :
School District, Appellee. : [Adm. Doc. #3795]

The above-captioned matter was first 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 record remained opened for the introduction of documentary evidence by Appellants and the second hearing was held on September 4, 1996, before the same hearing panel. Appellants, Brian and Julie Kelm, were present "telephonically," unrepresented by counsel. The Appellee, Albert City-Truesdale Community School District [hereinafter, "the District"], was also present on the telephone in the person of William Hullinger, superintendent. Appellee was 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 at found Iowa Code section 282.18(5)(1997) and chapter 290.

Appellants seek reversal of a decision of the Board of Directors [hereinafter, "the Board"] of the District made on June 17, 1996, denying the Appellants' "late" requests for open enrollment for their seven children on the grounds that there was no statutory good cause for the late filings. Requests had been made for the 1996-97 school year.

I.
FINDINGS OF FACT

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.

Brian and Julie Kelm are the parents of eight children. They adopted their seven youngest children in the two-year period between November 1992 and November 1994. These seven children are the subject of this open enrollment appeal. They are: Lucas, grade 9; Virginia, grade 5; Christin, grade 4; Cody, grade 3; Joey, grade 2; Manuel, grade 1; and Ronald, who is in kindergarten.

On May 30, 1996, Appellants filed applications for their children to open enroll from Albert City-Truesdale (hereinafter, "AC-T") to Newell-Fonda in order to participate in the home-schooling assistance program there. They were seeking open enrollment for the Fall of 1996.

On June 17, 1996, the AC-T Board denied the Appellants' open enrollment on the grounds that their applications were untimely (late without statutory "good cause"). Appellants maintained that they had statutory good cause because they did not move into the AC-T District until November 1, 1995. Therefore, they felt they were covered by the "good cause" rule relating to a change in the pupil's residence occurring between October 31st and June 30th of the year preceding the school year for which open enrollment is sought. 281-IAC 17.4(1)(a).

Superintendent Hullinger disputed Appellants' testimony that they had moved into the AC-T District after October 30th. He maintained that the file shows that they applied for their children's educational records to be sent from the LeMars District to AC-T on October 11, 1995. He reasoned that if they requested the records in October, they must have moved into the District in October. Appellants testified that they could prove when they actually moved into the AC-T District and asked for a continuance so that they could present documentary evidence to that effect. The hearing was continued at Appellants' request until September 4, 1996, to enable them to provide the hearing panel and the Superintendent with their evidence. Prior to the September 4, 1996, hearing, Appellants submitted three items of evidence for the hearing panel and Superintendent's review:

- Exhibit A: A letter from Appellants' landlord, Darwin Johnson. The letter stated that Appellants moved into his farm house on October 31, 1995;
- Exhibit B: A half-page article about the Kelms that appeared in the *Albert City News* on December 6, 1995. The article stated that the Kelms "moved to the Albert City community November 1;"

Exhibit C: A video tape of the Kelms' adoption hearing which was filmed in the Plymouth County District Court House on October 30, 1995. Mr. Kelm testified under oath that on that date (October 30, 1995), he resided in LeMars, Iowa.¹

Superintendent Hullinger testified that he disputed the reliability of the newspaper article (Exh. B) as well as the video tape of Appellants' sworn testimony at the adoption hearing (Exh. C). He did believe the letter from Appellants' landlord because he personally knew Mr. Johnson, and knew him as a truthful person. Overall, however, Superintendent Hullinger maintained that the decisive fact was not the date Appellants actually moved into the District, but the date on which Appellants requested that their children's educational records be sent from their old school to their new school. Since that request occurred on October 11, 1995, the Superintendent felt that Appellants should be bound by the October 30th open enrollment deadline.²

II.

CONCLUSIONS OF LAW

At the time the open enrollment law was written, the legislature apparently recognized that certain events would prevent a parent from meeting the October 30 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 who have "good cause" for missing the October 30 filing deadline. Iowa Code §282.18(2),(4)(1995).

The legislature chose to define 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 October deadline and before June 30. That provision states that "good cause" means

¹ This is consistent with Ms. Kelm's testimony that the family rented a U-Haul and moved to Albert City on October 31, 1995.

² At the time this appeal arose, the deadline for open enrollment was October 30th of the year preceding the school year for which open enrollment was sought. Now that date has been changed to January 1st of the year preceding the school year for which open enrollment is sought. See, Iowa Code section 282.18(2)(1997).

. . . 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, place-

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ment 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 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.

Id. at subsection (18).

This statutory direction was further defined by the rules of the State Board. As far as the "good cause" requirement that is pertinent to this appeal, the State Board rules specifically state as follows:

"Good cause" related to a change in the pupil's residence shall include:

- a. A change in the family's residence due to the family's moving from the district of residence from October 31st through June 30 of the school year preceding the school year for which open enrollment is requested.

...

The issue in the present appeal is what constitutes evidence of a change in residence? For open enrollment purposes, does the change in residence occur when the parent physically moves into the district or when the parent evidences intent to move into the district by transferring student records? We think the answer is obvious. Under Iowa Code section 282.6, a "resident" for the purposes of tuition - free education first requires that the person be physically present in the district. Id. To hold otherwise would penalize Appellants or others similarly situated, who had the foresight to request educational records prior to the physical move into a new school district. By the same token, under Superintendent Hullinger's rationale, physical presence in his District would not establish residency if the parents failed or

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refused to request the transfer of educational records from a former school district. Furthermore, we see no reason that Appellants would have misrepresented their residence in the District Court of Plymouth County while testifying at an adoption hearing, or when being interviewed by a local newspaper. At the time those actions were taken, Appellants did not plan to open enroll out of the AC-T District. They had no motivation for conspiring to misrepresent the time of their move for open enrollment purposes.

By the end of the second hearing, after Superintendent Hullinger had "inferred" that the Kelms had misrepresented the time of their move in order to circumvent the Open Enrollment Law, Ms. Kelm testified, "I am not a person who lies. ...As far as accusing my husband of lying under oath in a court of law, I have a problem with that. We have presented ourselves honestly. ... As far as honesty, if you can appreciate the attitude that is coming from this District, maybe you can understand some of the reasons we would like to be open enrolled to a district that is more favorable to us."

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 Albert City-Truesdale Community School District made on June 17, 1996, denying Appellants' untimely open enrollment request for their children to attend Newell-Fonda District for the 1996-97 school year is hereby recommended for reversal. There are no costs to this appeal to be assigned.

DATE

ANN MARIE BRICK, J.D.
ADMINISTRATIVE LAW JUDGE

It is so ordered.

DATE

C.W. CALLISON, VICE-PRESIDENT
STATE BOARD OF EDUCATION