IOWA STATE
BOARD OF EDUCATION
(Cite as 14 D.o.E. App. Dec. 40)

In re Joshua David Steele,	:	
Gary & Sandy Steele,	:	
Appellants,	:	
v.	:	***DECISION***
Fremont Community School District, Appellee,	:	***[Adm. Doc. #3785]***

The above-captioned matter was heard telephonically on July 31, 1996, before a hearing panel comprising Judy Jeffrey, division administrator, Division of Elementary & Secondary Education; Evelyn Anderson, consultant, Bureau of Community Colleges; and Ann Marie Brick, J.D., legal consultant and designated administrative law judge, presiding. The Appellants, Gary and Sandy Steele, were telephonically "present," unrepresented by counsel. Appellee, Fremont Community School District [hereinafter the "District"], was also "present" by telephone in the persons of Superintendent Robert McCurdy and Board Secretary Jacqueline Perkins, also *pro se*.

An evidentiary hearing was held pursuant to Departmental Rules found at 281--Iowa Administrative Code 6. Appellants sought reversal of a decision of the Board of Directors [hereinafter the "Board"] of the District, made on May 20, 1996, denying Appellants' late application for open enrollment for their son, Joshua David Steele, to attend the Pekin Community School District for the 1996-97 school year. Denial was for failure to show statutory "good cause" for filing after the October 30th deadline.

Authority and jurisdiction for this appeal are found in Iowa Code sections 282.18(5), 290.1 (1995).

I.

FINDINGS OF FACT

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.

Appellants have three children: Kelsey, who attends kindergarten; Daren, who is in seventh grade; and Joshua, who is in the ninth grade. Their home was originally in the Hedrick School District that was dissolved in 1990. Josh had open enrolled to the Fremont Community School District in 1989, as a second grader. After Hedrick was dissolved, Appellants were designated as residents of the Fremont Community School District.

Fremont and Eddyville-Blakesburg School Districts are parties to a wholegrade sharing agreement. Under this agreement, Josh is required to attend ninth grade in Eddyville. As a result, during the 1996-97 school year, Appellants' 5-year-old would be attending Pekin Community School District, their 12-year-old would be attending Fremont Community School District, and Josh would be attending Eddyville-Blakesburg.

The wholegrade sharing agreement between Fremont and Eddyville-Blakesburg expires after the 1996-97 school year. Appellant Sandy Steele testified that she had heard "reliable" rumors that the Fremont Board intended to enter into a wholegrade sharing agreement with Pekin for 1997-98 and beyond. She did not want to have her three children in three different districts, much less have Josh go to Eddyville for ninth grade and then have to transfer to Pekin for tenth grade. She didn't learn about this situation until January 1996, after the October 30th deadline for open enrollment had passed. About the same time in January, her son had a personal incident with people in the Eddyville District that convinced her it would be in his best interest to open enroll to Pekin.[1]

Ms. Steele testified that her application for open enrollment for her daughter to attend kindergarten and for Josh to attend ninth grade in the Pekin District was first presented at the February 1996 Board meeting. The Board tabled both requests until the March 1996 Board meeting. On March 18, 1996, the open enrollment request for Kelsey was granted, but the request for Josh was denied due to an untimely application. Ms. Steele then brought her request for Josh to open enroll back to the May Board meeting. She presented the following reasons to the Fremont Board as the basis for her request for late open enrollment:

[1] Sandy Steele stated to the hearing panel that she did not discuss her personal reason for wanting to open enroll Josh to anyone except the local Board President. She stated she did not feel comfortable revealing something that personal with the entire Fremont Board "in a small community where gossip runs rampant." He was the only Board member who voted in favor of her open enrollment request for Josh. Since Ms. Steele did not feel comfortable revealing the details of the incident to the local Board, and since the details of that "incident" will not change the outcome of this appeal decision, we do not think it is appropriate to provide the details in the Findings of Fact.

1. School has always been difficult for Joshua despite the fact that he studies very hard and takes difficult classes.
2. His present teachers have recognized this and have given him extra help when he needed it.
3. In a school Eddyville's size, Joshua would be pushed to the back of the class and get discouraged.
4. Adolescence is a difficult time without the strain of making new friends in a new school and switching to a different school district one year later.
5. Joshua's 4-H group is located in Pekin District. Ms. Steele is a leader of that group and it's easier to schedule meetings and activities within one district's schedule as opposed to three districts.
6. The Steeles' home is closer to Pekin than Eddyville and they have more acquaintances in Pekin.
7. Ms. Steele went to Eddyville High School and was an accomplished athlete in track. She does not want Josh to have to "follow" in her foot steps.

At the request of the hearing panel, Ms. Steele was advised to timely-file for open enrollment for the 1997-98 school year, pending the outcome of this appeal.

II.
CONCLUSIONS OF LAW

The Open Enrollment Law, as enacted by the General Assembly, has a procedure and deadline set by statute. Iowa Code §282.18 (1995). The deadline is October 30th of the school year for which open enrollment is sought. There are two "legal reasons" for filing after that date: 1. If there is "good cause;" or 2. "if the request is to enroll a child in kindergarten." Id. at subsection (2).[2]

"Good cause" is defined by statute and not by parents or local school districts. This means that although the parents feel that they have very "good reasons" for seeking open enrollment after the deadline, that does not mean their reasons satisfy the statutory "good cause" requirement. "Good cause" relates to only two general areas:

[2] After July 2, 1996, the Legislature has lengthened the period of open enrollment for children in grades 1-12 to January 1st of the year preceding the school year for which open enrollment is sought. However, the does not change the outcome of this case. S.F. 2201, 76th Gen. Assem., 2nd Sess. (1996).

> (1) There is a change in a status of the pupil's resident district (e.g., dissolution or reorganization); or
>
> (2) There is a change in the residence of pupil ... (the pupil moves into or out of the district after the open enrollment deadlines).

Id. at subsection 282.18(18) (1995).

Appellant Sandy Steele testified that her desire for open enrollment originally arose out of a dissatisfaction with the fact that the children would attend separate schools in three separate districts. In addition, she had strong feelings about Joshua not attending high school in Eddyville where she competed in track. Although the hearing panel believes that open enrollment for the Steeles would be more convenient; and that having the children together in the same district is certainly a compelling reason to seek open enrollment, neither circumstance constitutes the statutory “good cause” necessary for excusing the late application.

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 (1991).

In the scores of appeals brought to the State Board following the enactment of the open enrollment law, only a few have merited reversal. We have heard nearly every reason imaginable deemed to be "good cause" by the Appellants. 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 Desirea 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, In re Misty Deal, 12 D.o.E. App. Dec. 128 (1995); and was recommended for a special education evaluation, In re Terry and Tony Gilkison, 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). Nor was "good cause" 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).

This case falls within the precedent established by In re Candy Sue Crane, above. In this case, as in that one, we are not being critical of Appellants' reasons for wanting open enrollment. We are simply of a belief that the stated reasons do not meet the good cause definition, nor do they 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" the 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(20)(1995).

As to the merits of this case, we see no error in the decision of the Board of the District. The District's application of its policy is consistent with the State law and rules of the Department of Education. Consequently, there are no grounds to justify reversing the District Board's denial of the open enrollment application for Joshua.

All motions or objections not previously ruled upon are hereby denied.

III.
DECISION

For the reasons discussed above, the decision of the Fremont Community School District’s Board of Directors made on May 20, 1996, denying Appellants’ untimely open enrollment request for Joshua David Steele to attend the Pekin Community School District for the 1996-97 school year, is hereby recommended for affirmance. There are no costs of this appeal to be assigned.

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DATE ANN MARIE BRICK, J.D.
ADMINISTRATIVE LAW JUDGE

It is so ordered.

_____ _____

DATE TED STILWILL, DIRECTOR
DEPARTMENT OF EDUCATION