IOWA STATE DEPARTMENT
OF EDUCATION
(Cite as 13 D.o.E. App. Dec. 409)

In re David George Gobberdiel	:	
Linda Gobberdiel,	:	
Appellant,	:	
v.	:	DECISION
West Des Moines Community	:	
School District, Appellee	:	[Adm. Doc. #3769]

The above-captioned matter was heard telephonically on June 11, 1996, before a hearing panel comprising Dr. Cordell Svengalis, consultant, Office of Educational Services for Children, Families and Communities; Mr. Dick Boyer, administrative consultant, Bureau of Administration, Instruction and School Improvement; and Ann Marie Brick, J.D., legal consultant and designated administrative law judge, presiding. The Appellant, Linda Gobberdiel, was present "telephonically," unrepresented by counsel. Appellee, West Des Moines Community School District [hereinafter, "the District"], was also present on the telephone in the person of Dr. Galen Houser, associate superintendent, also *pro se*.

An evidentiary hearing was held pursuant to Iowa Code chapter 290 and Departmental Rules found at 281--Iowa Administrative Code 6. Authority and jurisdiction for this appeal are found in Iowa Code sections 282.18(5); 290.1 (1995).

Appellant seeks reversal of a decision of the Board of Directors [hereinafter, "the Board"] of the District made on April 8, 1996, denying her late open enrollment request for David to attend the Des Moines Independent School District for the 1996-97 school year.

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 before them.

At the time this appeal was heard by the Department of Education, Appellant's son, David, had just completed first grade at West Ridge Elementary School in West Des Moines. Before that, David had attended Montessori Children's House in West Des Moines. He was in the Montessori program from the time he was two years of age in 1991 through his completion of kindergarten in the Spring of 1995. Ms. Gobberdiel feels very strongly that the Montessori classroom provided a personalized learning environment and freedom in self-directed learning that is lacking in the traditional public school classroom. She testified that David's experience in Montessori education increased his enthusiasm for learning as a life-long adventure. Appellant and her husband believe so strongly in Montessori education that they incorporate the approach whenever possible into their family life. In addition, Linda Gobberdiel has been trained and has taught part-time in a Montessori classroom since April of 1994. Unfortunately, economic considerations prevent Ms. Gobberdiel from continuing David's education in the Montessori School. So in August 1995, David began first grade at West Ridge Elementary in West Des Moines.

At the time this appeal arose, the deadline for open enrollment was October 30 of the year preceding the year for which open enrollment is sought.[1] After the open enrollment deadline, Ms. Gobberdiel learned that for the 1996-97 school year, Des Moines would have a Montessori program up through the third grade. This program was being relocated to Cowles Elementary and she learned that there were plans to eventually expand the program through the sixth grade. On March 15, 1996, she visited the Montessori program which was located at Hillis Elementary School in Des Moines. The program was not offered for elementary-aged children during the 1993-94 school year. It was established for first and second graders during the summer of 1995 and was expanded for first, second, and third graders for the 1996-97 school year. On March 27, 1996, Appellant called Mr. Houser, the associate superintendent of the West Des Moines District. She sought open enrollment information and learned at that time her application would probably be denied because the October 30th deadline for the 1996-97 school year had passed. Nevertheless, she submitted her application on April 3, 1996. It was denied by the West Des Moines Board on April 8, 1996, for being "late without statutory good cause."

[1] As of July 1, 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, that does not change the outcome in this case. S.F. 2001, 76th G.A., 2d Sess.(1996).

When the Gobberdiels applied for David to open enroll to the Des Moines Independent Community School District, they also filed an application for their youngest son, Tyler, to attend kindergarten in the Des Moines District for the 1996-97 school year. Tyler's open enrollment was approved because kindergartners have until June 30 of the year preceding the school year for which open enrollment is sought.

At the appeal hearing, Ms. Gobberdiel stated that she understood her situation did not specifically constitute "good cause" as set forth in the Iowa Code. However, she recited the State Board's broad discretion "to achieve just and equitable results which are in the best interests of the affected child," which is provided by Iowa Code section 282.18(20)(1995). In addition, Ms. Gobberdiel testified that she understood that the intent of the Open Enrollment statute is "to maximize parental choice and access to educational opportunities which are not available to children because of where they live." Affidavit of Appeal, p. 2 (citing section 282.18(1)). Therefore, she contended, her application should be granted in spite of being late.

II.
CONCLUSIONS OF LAW

The Iowa Open Enrollment Law creates a conditional right for parents to select the school district of attendance for their children. Iowa Code section 282.18. One of the primary conditions is timely-filing. Id. at (2). At the time this appeal arose, there was an October 30th deadline imposed by law and applications filed by that date could be approved for open enrollment the following year. In order for Appellant's application to be approved for the 1996-97 school year, she had to apply by October 30, 1995. She did not.

Appellant knows that she filed after the deadline, but feels that she meets the "good cause" requirements to enroll. "Good cause," however, is defined by statute. The Legislature chose to define the term "good cause," rather than leaving it up to parents or school boards to determine. Although this may sound unfair to the parents, it was the Legislature's determination that all parents be treated equally in all school districts throughout the state. Therefore, the statutory definition of "good cause" addresses two types of situations that must occur before the filing deadline is: 1) A change in the child's residence; or 2) A change in the status of the resident school district. In particular, the statute states:

> . . 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 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).

The "statutory excuses" set forth above have been found inapplicable to the present case. We agree with the District in concluding that statutory "good cause" does not exist.

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); or because the school was perceived as having a "bad atmosphere," In re Ben Tiller, 10 D.o.E. App. Dec. 18 (1993); or 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); or 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).

In this case, as in all of the others, we are not being critical of Appellant’s 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 discretionary 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 West Des Moines Board since the District's application of its policy was consistent with State Law. The fact that the Legislature extended the deadlines for Open Enrollment

until January 1 *after* the Gobberdiels had missed the deadline which was applicable to them, does not change the results in this case. The Gobberdiels are disadvantaged no more than the scores of other parents whose appeals have been denied because they filed late without good cause. It is not that the hearing panel is not sympathetic toward the Appellants' plight; but that we are unable to extend the discretionary power of Iowa Code section 282.18(20) to the facts of this case.

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 West Des Moines Community School District made on April 8, 1996, denying Appellant's untimely open enrollment request for her son, David George Gobberdiel, to the Des Moines Independent Community School District for the 1996-97 school year is hereby recommended for affirmance. There are no costs to this appeal to be assigned.

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

It is so ordered.

_____ _____
DATE TED STILWILL, DIRECTOR
DEPARTMENT OF EDUCATION