IOWA STATE DEPARTMENT
OF EDUCATION
(Cite as 13 D.o.E. App. Dec. 388)

In re Jeff Rude	:	
Doug & Bonnie Rude, Appellant,	:	
v.	:	DECISION
Keota Community School District, Appellee.	:	[Adm. Doc. #3726]

The above-captioned matter was heard telephonically on May 6, 1996, before a hearing panel comprising Don Smith, consultant, Bureau of Vocational and Technical Education; Milt Wilson, consultant, Bureau of Administration, Instruction and School Improvement; and Ann Marie Brick, J.D., legal consultant and designated administrative law judge, presiding. The Appellant, Bonnie Rude, was present "telephonically," unrepresented by counsel. The Appellee, Keota Community School District [hereinafter, "the District"], was also present on the telephone in the person of Dr. Donna Henningsen, 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).

Appellants seek reversal of a decision of the Board of Directors [hereinafter, "the Board"] of the District made on February 8, 1996, denying their late request for **immediate** open enrollment to enable their son, Jeff Rude, to attend the Mid-Prairie Community School District.

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 live in the Keota Community School District and have two children: Jeff, who is in the sixth grade for the 1996-97 school year; and Tawnya, who is in the ninth grade. During the 1994-95 school year, the family lived in the Mid-Prairie Community School District, with Mr. Rude's sister. In the summer of 1995, they moved into the Keota District. Under the provisions for "continuation of open enrollment,"[1] Tawnya open enrolled back into the Mid-Prairie Community District. Jeff had the same option but decided to try the Keota School. By December 1995, Appellants decided that Jeff would be better off back at the Mid-Prairie School. His mother testified that "the kids picked on him too much ... things didn't seem to work out well for him and he was failing most of his subjects."

Just before Christmas break, Appellants went to Superintendent Henningsen and told her that they wanted to open enroll Jeff back into Mid-Prairie immediately. Dr. Henningsen advised them that it was too late. The parents didn't fill out a formal application for open enrollment at that time. Instead, Jeff cleaned out his desk on the last day of school before Christmas vacation. He didn't return to Keota in January of 1996. Unbeknownst to the administration or teachers at Keota, Mr. Rude and Jeff moved back into Mr. Rude's sister's home in January and enrolled Jeff in Mid-Prairie on January 3, 1996.

According to the testimony of Superintendent Henningsen, the Rudes came in to see her toward the end of December of 1995. They requested that Jeff be allowed to return to Mid-Prairie immediately. The parents stated that kids were picking on Jeff and that Jeff was having some trouble with his grades. At that time, Superintendent Henningsen told the Rudes to give her a day or two and she would get back to them. Dr. Henningsen spent time observing Jeff in his classroom; she visited with his teachers; and conferred with the building principal. Although these individuals agreed that Jeff lacked some motivation completing homework assignments, they were not aware of any major problems between Jeff and the other students. They did not agree with the parents that Jeff was failing academically. As a result, the Superintendent contacted Mrs. Rude and advised her there was no reason for Jeff to be open enrolled back to Mid-Prairie for academic or social reasons.

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[1] Pursuant to 281--Iowa Administrative Code 17.8(7) if the parent moves out of the school district of residence, the parent has the option for the student to remain in the original district of residence as an open enrollment pupil. When exercising this option, the parent is required to file an open enrollment request with the new district of residence for processing and recordkeeping purposes no later than the third Thursday of the following September. Id.

On January 3, 1996, Mrs. Rude contacted Superintendent Henningsen and informed her that Jeff was attending Mid-Prairie Schools. Dr. Henningsen spoke to the Rudes' landlord and found that they had not moved from the residence located in the Keota District. Dr. Henningsen then contacted Dr. Cook, who is the Superintendent of the Mid-Prairie District, and asked him to investigate. He found that the bus was picking up Jeff in Mid-Prairie at a relative's home. As a result of a conference between the administration at Mid-Prairie and the Rudes, Appellants moved Jeff back to the Keota District and filed an open enrollment application which was denied by the District Board on February 6, 1996. His application was denied because it was late without "statutory good cause."[2]

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 would be approved for open enrollment the following year.[3] In order for Appellants' application to be approved for the 1996-97 school year, she had to apply by October 30, 1995. They did not.

Appellants know that they filed after the deadline, but feel that they meet the "good cause" requirements to enroll in the Mid-Prairie Community School District. "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

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[2] At the time of the appeal hearing, Jeff had received his third quarter grades from Keota. His report card showed a C- in Reading; D- in Math; C- in Social Studies; D in Science; C in English; D in Spelling; F- in Handwriting; "0" for Outstanding in Music; and "S" for Satisfactory in P.E. and Art. Dr. Henningsen stated that his teachers feel he is improving and no staff has recommended an evaluation for special education.

[3] Effective July 1, 1996, the Legislature lengthened the deadline for open enrollment applications for children in grades 1-12 to January 1 of the year preceding the school year for which open enrollment is sought. However, that does not change the outcome in this case. See, S.F. 2201, 76th G.A.2d Sess. (1996).

excused: 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 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 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 Keota Board since the District's application of its policy is consistent with the State Law.

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 Keota Community School District made on February 6, 1996, denying Appellants' untimely open enrollment request for their son to attend the Mid-Prairie Community School District immediately and thereafter, is hereby recommended for affirmance. There are no costs to this appeal to be assigned.

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

It is so ordered.

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DATE TED STILWILL, DIRECTOR
DEPARTMENT OF EDUCATION