

IOWA STATE BOARD
OF EDUCATION
(Cite as 13 D.o.E. App. Dec. 325)

In re Evan Wiseman :

James W. & Merry C. Wiseman, :
Appellants, :

v. : DECISION

Burlington Independent Community :
School District, Appellee. : [Adm. Doc. #3776]

The above-captioned matter was heard telephonically on July 18, 1996, before a hearing panel comprising Don Wederquist, consultant, Bureau of Community Colleges; Ron Riekena, consultant, Bureau of Food and Nutrition; Ann Marie Brick, J.D., legal consultant and designated administrative law judge, presiding. The Appellant, Merry Wiseman, was "present" telephonically and as an attorney, represented herself. Appellee, Burlington Independent Community School District [hereinafter "the District"], was also "present" by telephone in the person of Superintendent Stephen Swanson. Appellee was represented by counsel, Brian L.Gruhn of the Gruhn Law Firm in Cedar Rapids, Iowa.

A hearing was held pursuant to Departmental Rules found at 281--Iowa Administrative Code 6. Both parties agreed to a stipulation of facts and made oral arguments on behalf of their respective positions. Appellant seeks reversal of a decision of the Board of Directors [hereinafter "the Board"] of the District made on June 3, 1996, denying her son's **amended** request for open enrollment. The Board denied the request because the current open enrollment rules, 281--IAC 17 do not provide guidance for the grant or denial of an amended open enrollment application when the initial application, which was granted by the sending district, is denied by the receiving district for insufficient classroom space.

Authority and jurisdiction for the appeal are found in Iowa Code section 282.18(5) (1995).

I.
JOINT STIPULATION OF FACTS

The administrative law judge finds that she and the State Board of Education have jurisdiction over the parties and subject matter before them.

1. The present open enrollment instructions provided by the Department of Education state in paragraph 13 that the applicant needs to name the four-digit code of the district that the applicant wishes to attend. The form does not provide the parent with the option of naming more than one district. (Exh. B)

2. The Appellants, Merry C. and James W. Wiseman, parents of Evan B. Wiseman, filed an application for open enrollment with the Burlington Independent Community School District on or about August 27, 1995. (Exh. C) On November 20, 1995, the open enrollment request filed by Appellants was approved by the Board of Directors of the Burlington Independent Community School District because it was timely-filed. (Exh. D)

3. In a letter dated December 7, 1995, Superintendent Stephen L. Swanson of the Burlington Independent Community School District informed Appellants that the open enrollment request for the forthcoming year had been approved by the Board of Directors. This letter also notified Appellants that the receiving district must decide whether or not they will accept the application filed by the parents. (Exh. D)

4. On or about December 22, 1995, Appellants received a letter from Superintendent James M. Sleister of the West Burlington Community School District, notifying them that West Burlington had met on Thursday, December 21, 1995, to review their application for open enrollment. The letter notified Appellants that the application for their child to enroll into West Burlington was denied due to insufficient classroom space. The letter also notified the Wisemans of their appeal rights.

5. On or about March 11, 1996, Superintendent Swanson of the Burlington Independent Community School District received a letter from Appellants requesting that they be allowed to amend their original application for open enrollment, changing the enrollment to the Mediapolis Community School District as opposed to the original request of West Burlington. (Exh. G)

6. On or about April 18, 1996, Superintendent Swanson notified Appellants that the amended application request for open enrollment to Mediapolis was denied by the Burlington District Board. The letter stated that the denial reason was because the application was past the deadline.

7. On May 16, 1996, the Burlington Independent Community School Board met in a regular meeting and initially moved to deny the amended application. The Board then tabled the amended application to give Ms. Wiseman an opportunity to meet with high school personnel. (Exh. I)

8. On Thursday, May 23, 1996, around 3:00 p.m., the high school principal, B. F. Crist, met with Mr. and Mrs. Wiseman to discuss their son's possible enrollment at the Burlington High School. They met again on Thursday, June 6, 1996, at 1:30 p.m. to discuss a possible section 504 hearing for the Wisemans' son. The parties did not arrive at any agreements at these meetings concerning Evan's attendance at Burlington High School.

9. At the Board meeting of June 3, 1996, the Burlington Board of Directors denied the Appellants' amended request for open enrollment and stated as follows:

Open enrollment amendment request: Mr. Brandt moved to deny an amended request for open enrollment of a student originally to attend West Burlington but denied by West Burlington, and later amended after the deadline to attend Mediapolis through open enrollment. The motion was seconded by Ms. Boyd. On a roll call vote, the motion carried 5-0 with Mr. Abrisz abstaining.

10. On June 6, 1996, Appellants appealed the Burlington School Board's decision to the Iowa State Board of Education.

II. CONCLUSIONS OF LAW

This case represents the need to balance several important but often competing interests under the Open Enrollment Law: the first is to satisfy the legislative intent to "permit a wide range of educational choices for children enrolled in schools in this state and to maximize the ability to use those choices." Section 282.18(1)

(1995). Secondly, the exercise of parental choice must be balanced against the ability of the receiving district to deny an open enrollment application when there is "insufficient classroom space in the district." Iowa Code section 282.18(7). The clash of these two interests has created a case of first impression for the State Board to decide.

Ordinarily, when parents are approved for open enrollment and their receiving district "of choice" is full, they either challenge the receiving district's denial for insufficient classroom space by appealing to the State Board, or they remain in their district of residence. This case goes one step further. If the district of residence has already given permission for the student to open enroll out but the receiving district is full, why can't the parents choose an alternative receiving district? Because the Department's rules implementing the Open Enrollment Law (282.18) do not address this situation, both the District Board and the parents have appealed in order to seek guidance from the State Board.

The Open Enrollment Law has been amended several times since it was first enacted in 1989. Compare, Iowa Code section 282.18(1989 Supp.) with 282.18(1995). The legislative amendments have progressively tipped the balance in favor of parental choice at the same time that they have limited the local board's ability to deny open enrollment applications which are timely-filed. Support for this proposition comes from an examination of the legislative changes that have been made since 1989. The original Open Enrollment legislation stated:

It is the intent of the general assembly to allow a pupil with special and exceptional needs to enroll in a district contiguous to the pupil's resident district if the contiguous district offers coursework or programs, not already available to the pupil, that would meet the needs of the pupil.

Iowa Code section 282.18(1989). In contrast, the amended first paragraph of the present legislation reads as follows:

It is the goal of the general assembly to permit a wide range of educational choices for children enrolled in schools in this state and to maximize ability to use those choices. It is therefore the intent that this section be construed broadly to maximize parental choice and access to educational opportunities which are not available to children because of which they live.

Iowa Code section 282.18(1995).

The original Open Enrollment Law required parents to engage in a two-step process to open enroll out of the district. By September 15 of the preceding school year, the parent or guardian had to "informally notify" the district of residence of their intention to open enroll. Then, not later than November 1 of the preceding school year, the parent or guardian had to send notification to the district of residence and to the Department of Education, on forms prescribed by the Department, that the parent or guardian intended to enroll their child in a public school in another district. Iowa Code section 282.18(1989 Supp.). However, in the 1990 legislative session, the Open Enrollment Law was amended to eliminate the "informal notice provision" and require a parent to file a formal application for each child by October 30 instead of November 1. (See, S.F. 2306, section 1, 73 G.A., 2d Sess.(1990).) See, also, In re Ruby, Mason, and Audrey Andrews, 7 D.o.E. App. Dec. 379, 380-81 (1990).

Although the General Assembly used the term "application," there is no statutory ability for a resident district to deny a timely-filed application for open enrollment unless the departure of the student would negatively impact a bona fide desegregation plan. In re Luke Dorschner, et al., 7 D.o.E. App. Dec. 325, 327 n.1 (1990).

In the 1992 legislative session, the Open Enrollment statute was amended to give the State Board authority to set aside statutory limitations on open enrollment when to do so would serve the best interest of the child. "Notwithstanding the general limitations contained in this section, in appeals to the state board from decisions of school boards relating to student transfers under open enrollment, the state board shall exercise broad discretion to achieve just and equitable results which are in the best interests of the affected child or children." 1992 Iowa Acts, ch. 1135, section 5(Iowa Code section 282.18(20)(1995).) This statutory amendment has been viewed by the State Board as a "discretionary exercise of the state

board's power of appellant review, to be applied judicially whenever a child's unique situation cries out for state board intervention. We see it as an opportunity to recognize a form of 'good cause' the legislature was unable to envision, not unwilling to envision." In re Cameron Kroemer, 9 D.o.E. App. Dec. 302, 307-08 (1992).

Given the expressed legislative intent that the Open Enrollment Law be "construed broadly, to maximize parental choice," and that in deciding open enrollment appeals "the State Board shall exercise broad discretion to achieve just and equitable results which are in the best interest of the affected child," Evan Wiseman should be allowed to open enroll to the Mediapolis Community School District.

At this point, we are not prepared to say that a rule should be promulgated giving every student rejected by a receiving district the opportunity to "shop around" for an alternative second choice. We would urge school districts to advise parents, whenever possible and if appropriate, to check with districts that have a history of being closed to open enrollment.¹ Although there is no Department of Education rule in 281--Iowa Administrative Code chapter 17, which provides for the filing of an amended open enrollment application, the procedure may be recognized by local district policy. This is not to say that a local district has an obligation to accept "amended" applications, it is simply a reminder that they always have the option to do so.

For the foregoing reasons, it is recommended that the State Board exercise its subsection 20 power to allow Evan Wiseman to open enroll to the Mediapolis Community School District in spite of the "general limitations contained in this section" regarding the open enrollment time lines. See, 282.18(20)(1995).

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

¹ We take judicial notice of the fact that at this point in time, the school districts of Iowa City, Bettendorf, Humboldt, Norwalk, Pleasant Valley, Saydel and West Burlington have not been accepting open enrollment students due to "insufficient classroom space." Although this can change yearly, the fact that we know of only seven districts which are doing this shows that the problem is not wide-spread.

III.
DECISION

For the reasons discussed above, the decision of the Burlington Independent Community School District's Board of Directors made on June 3, 1996, denying Appellants' amended request for open enrollment for Evan Wiseman to attend Mediapolis Community School District, is hereby recommended for reversal. 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