

**IOWA STATE DEPARTMENT  
OF EDUCATION**  
(Cite as 13 D.o.E. App. Dec. 195)

---

<b><i>In re James Montgomery</i></b>	:	
	:	
Cindy Johnson, Appellant,	:	
	:	
v.	:	DECISION
N.E. Hamilton Community School District, Appellee.	:	
	:	[Admin. Doc. # 3681]

---

The above-captioned matter was heard telephonically on December 4, 1995, before a hearing panel comprising Mary Jo Bruett, Bureau of Planning, Research and Evaluation; Sandy Sandvick, Bureau of School Administration and Accreditation; and Ann Marie Brick, J.D., legal consultant and designated administrative law judge, presiding.

The Appellant, Cindy Johnson, was "present," by telephone unrepresented by counsel. The Appellee, N.E. Hamilton Community School District [hereinafter "the District"], was also "present" by telephone in the person of Superintendent Gary Schnellert and Board Secretary Johna Clancy, also *pro se*.

A evidentiary hearing was held pursuant to Departmental rules found at 281--Iowa Administrative Code 6. Authority and jurisdiction for this appeal are found in Iowa Code § 282.18(5) (19-95) and chapter 290.

Appellant seeks reversal of a decision of the Board of Directors [hereinafter "the Board"] of the District made on September 18, 1995, denying the Appellant's late request for open enrollment for James Montgomery for the 1995-96 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 of the appeal before them.

James Montgomery is currently attending fifth grade in Webster City Community School District where he has attended school since kindergarten. He has a younger brother, who is three years old, who qualifies for special education services which are only available to him in a pre-school program provided by the Webster City District.

The problem giving rise to this appeal resulted when the Johnsons moved to their current location in October 1994. At that time, Ms. Johnson was unsure whether they were still part of the Webster City Community School District or whether their move had placed them in the N. E. Hamilton Community School District. When she approached the Webster City District elementary principal about the issue, she was asked whether she and her husband would be transporting the children to school. She answered in the affirmative since she and her husband both work in Webster City. The principal then told her there would be nothing to worry about because the children were entitled to continue their education in Webster City. She was not advised to file any papers or to contact the N.E. Hamilton administration.

Prior to the commencement of the 1995-96 school year, she registered James for school and changed his address to their current P.O. Box number in Kamrar, Iowa. She didn't file any open enrollment papers with either school district.

In reviewing the registration forms, the superintendent of the Webster City District, Dennis Barr, noticed the Kamrar address for the Johnsons. He then called the superintendent of N.E. Hamilton to inquiry about the tuition status of James Montgomery. As a result of this conversation, Appellant received a registered letter from Superintendent Gary Schnellert on September 1, 1995, that James Montgomery was attending the Webster City School District "illegally." After receiving no response, he called Ms. Johnson at her workplace on September 8, 1995, and spoke to the receptionist. He told the receptionist to have Ms. Johnson call him because she had an open enrollment problem. The next day, Superintendent Schnellert successfully reached Mr. Johnson and advised him that, "we need your open enrollment application by October 30th for next year. This year is still in limbo. ..."

Superintendent Schnellert testified that he received open enrollment papers from Appellants on September 18th, the same day as the Board meeting, seeking open enrollment for the 1995-96 school year for James Montgomery. That evening, the Board unanimously denied the open enrollment request for the 1995-96 school year.<sup>1</sup> As a result, the issue on appeal is James Montgomery's open enrollment status during his fifth grade year (the 1995-96 school year).<sup>2</sup>

197

---

<sup>1</sup>However, the Superintendent assured the hearing panel that open enrollment for 1996-97 had been granted to the Johnsons for James Montgomery.

<sup>2</sup>Students are "counted" by the resident district for school aid purposes on the third Friday of September. For that reason, parents of students who move, but want their children to continue attending in the "old" district must file "continuation" open enrollment papers with the resident district by the third Thursday of the September following the move. "Timely requests under this subrule shall not be denied." 281--IAC 17.8(7) (emphasis added.). This date was September 21, 1995, in the present case. Appellant's filed for open enrollment on September 18, 1995. We assume James was counted by N.E. Hamilton.

**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

. . . 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).

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:

198

- 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.**

...

281--Iowa Administrative Code 17.4(1)(a).

Unfortunately, Ms. Johnson testified that she and her husband moved from the Webster City Community School District into the N.E. Hamilton School District on October 1, 1994. That means that "technically" she does not come within the "good cause" exception specified in 281--17.4(1)(a). However, she did question the principal of the Webster City elementary school and sought guidance on what she should do. Because she and her husband would be transporting James, the principal advised her that she would be allowed to continue to attend in the district. Relying on this information, Mr. and Mrs. Johnson took no steps to apply for open enrollment by the October 30th deadline which would have entitled them to attend in the Webster City Community School District for the 1995-96 school year. By moving on October 1, instead of a month later, the Johnsons face a year of tuition payment for their son, James. Yet, there can be little question that the present situation fits the definition of "good cause" contemplated by Rule 17.4(1)(a).

The problem is, State Board precedent has always held that "ignorance of the law is no excuse." (See, e.g., In re Matthew Lars Egesdal, 13 D.o.E. App. Dec. 189 (1996); In re Candy Sue Crane, 8 D.o.E. App. Dec. 198 (1990)). Usually that admonition is intended for those parents who are uninformed about the open enrollment deadlines, and but have not sought guidance before failing to act. In this case, however, Ms. Johnson sought guidance and was told by a school administrator that she didn't have to worry about filing any papers.<sup>3</sup>

In the present case, it would seem unfair to enforce a deadline against the parent who did seek information from the school administration, but who was incorrectly informed. There is also the fact that the Johnsons fulfilled the spirit, if not the letter, of the "continuation" open enrollment law by filing their application prior to the third Thursday in September following their move. 281--IAC 17.8(7).

Although we cannot excuse the deadline under the rules stated in 17.4(1)(a) stated above, we are not without recourse. In 1992, the General Assembly amended the Open Enrollment Law to add the following new subsection:

199

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 interest of the affected child or children.

Iowa Code §282.18(20) (1995).

---

<sup>3</sup>Granted, these deadlines are difficult to keep track of for those who do not work with open enrollment on a frequent or daily basis. However, we would caution school administrators to seek specific information before giving advice to parents in the less than routine cases.

Although the State Board has not exercised its subsection (20) power in many cases, it has done so to prevent a result contrary to the best interests of the student and his or her family. See, e.g., In re Bryan Swift, 12 D.o.E. App. Dec. 24 (1994); In re Ann and Patrick Taylor, 10 D.o.E. App. 285 (1993); In re Christopher Forristall, 10 D.o.E. App. Dec. 262 (1993). The present situation presents an appropriate occasion for the use of the subsection (20) power. It is under this broad grant of authority to act in the best interest of the child that the decision of the N.E. Hamilton Community School District, denying the open enrollment application for James Montgomery to attend Webster City Community School District for the 1995-96 school year is hereby recommended for reversal.

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

**III.  
DECISION**

For the foregoing reasons, the decision of the N.E. Hamilton Community School District's Board of Directors made on September 18, 1995, denying Appellant's untimely open enrollment request for her son, James Montgomery, to attend the Webster City Community School District for the 1995-96 school year 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

\_\_\_\_\_  
TED STILWILL  
DIRECTOR