

**Iowa State Board
of Education**

(Cite as 13 D.o.E. App. Dec. 7)

In re Brett Austin Hansen*	
In re Morgan Nelson	:
In re Stephen and Kevin Ballou	:
Steve and Deb Nelson, and	:
Dennis and Marlene Ballou,	:
Appellants,	:
v.	:
	:
	DECISION
Exira Community	:
School District,	:
Appellee.	: [Adm. Doc. # 3690 & 3691]

The above-captioned matter was heard telephonically on January 19, 1996, before a hearing panel comprising Don Wederquist, Bureau of Community Colleges; Jeff Lorenz, Bureau of Internal Operations; and Ann Marie Brick, J.D., legal consultant and designated administrative law judge, presiding. The Appellants, Steve and Deb Nelson and Marlene Ballou, were "present" telephonically, unrepresented by counsel. Appellee, Exira Community School District [hereinafter "the District"], was also "present" in the person of Dr. Otto Faaborg, Superintendent, also *pro se*.

An evidentiary hearing was held pursuant to Departmental Rules found at 281 Iowa Administrative Code chapter 6. Authority and jurisdiction for this appeal are found in Iowa Code § 282.18(5) (1995) and chapter 290. Appellants' appeals were consolidated because they shared common questions of law and fact. They all seek reversal of the decision of the board of directors [hereinafter "the Board"] of the District, made on November 13, 1995, to table their timely-filed requests for open enrollment until the Board's December 11, 1995, meeting.

**I.
Findings of Fact**

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

*Adm. Doc. #3693, *In re Brett Austin Hansen*, has been dismissed at the request of the parents. The Exira Board granted this open enrollment application at its December 11, 1995, meeting after having tabled the application at its November 13, 1995, meeting.

The Hansens, Nelsons, and Ballous all filed applications for open enrollment with the Exira Community School District in a timely manner. Appellants all appealed to the State Board after the District Board decided to table their applications at its November 13, 1995, meeting. No reason was given for the Board's action.

At its next regularly scheduled meeting on December 11, 1995, the application for Brett Hansen to open enroll to Atlantic Community School District as a kindergartener was approved for the 1996-97 school year. The applications of the Nelsons and Ballous were again tabled.

When the Hansens completed their open enrollment application, they circled reason #6 as the reason why they sought open enrollment.

FAMILY CONVENIENCE--parents work in other district, location of baby-sitter, location of grandparents, location of doctors, place where shop and participate in community activities.

In contrast to the Hansens, the Nelsons and Ballous both circled reason #8 on their applications when they applied for open enrollment to the Audubon Community School District. Reason #8 states as follows:

SCHOOL ATMOSPHERE/VALUES/PHILOSOPHY--more concerned with academics than with athletics, policies of the district, attitude of the board, staff concerned about students, small and/or large school atmospheres.

Superintendent Otto Faaborg testified that the Board felt that Appellants should come and explain, in person, what the problems are with the Exira District that would cause them to seek open enrollment. That way, the Board could work on "correcting" any problems the parents had. So, Board member Bauer moved that the applications of the Nelsons and Ballous be "tabled" until these people came to the Board and explained, in person, what was wrong with the District. At the direction of the Board, Superintendent Faaborg wrote the following letter to both Appellants on December 12, 1995:

Greetings,

The Exira Board of Education invites you to come to the next regular meeting to make the Board aware of the *School Atmosphere/Values/Philosophy* advantages in the Audubon School compared to the Exira School. The Exira Board of Education has tabled your request to open enroll [students' names] to Audubon for 96-97 until that meeting.

The discussion concerning this motion was in regard to claims that the Open Enrollment Law would foster competition between schools and thus be of benefit to schools and students. This goal of open enrollment can be met only if the Board of Education of the sending district can be made aware of the areas in which they need to improve the program of their school. We request your input on this matter.

Sincerely,

Otto Faaborg

Appellants testified that they did not interpret this letter as a "friendly invitation," so they did not plan to attend the next "regular meeting."¹ They felt it was intimidating to have to appear before the Board to justify their reasons for open enrolling to the Audubon School District. On the other hand, Superintendent Faaborg stated that the Board members just wanted to "know why these parents, Exira residents, would elect to send their children to a district far from their home. The Board just wants to know their reasons," he said.

Superintendent Faaborg further testified that the reasons all three open enrollment requests were originally tabled at the November meeting was to give two newly-elected Board members a chance to review the Law. Additionally, there was a special election scheduled to fill a vacant Board seat on November 28, 1995. It was thought that the December meeting would be a better opportunity to discuss the Board's position.²

However, according to an article appearing on the front page of the Audubon County Advocate Journal dated December 15, 1995, at its December meeting, the Exira Board talked about adopting a new method of handling open enrollment requests.

The Board at Monday's meeting said that it would like an explanation of all the requests.

"We need to know where we are falling short and it then can be corrected. . . . I think they [the parents] need to come in and explain their reasons."

A question was posed about whether the District has the right to table or deny requests until specific reasons are presented.

¹Superintendent Faaborg stated the next meeting was scheduled for January 22, 1996.

²At the December 11, 1995, Board meeting, three of the five Board members were fairly new in their positions.

"You have to realize we won't win this, but it can be used for our benefit," said Superintendent Otto Faaborg.

"The purpose of open enrollment was to create competition among schools and it's not out-of-line to expect an explanation for a request out of the district," he said. . . . "It is hoped that, if areas concerning parents seeking open enrollment are dealt with, it may possibly stem the tide."

Attributed to Audubon County Advocate Journal, front page, December 15, 1995.

II. CONCLUSIONS OF LAW

Iowa's Open Enrollment Law provides that, in general, applications for open enrollment out of the school district must be filed between July 1st and October 30th of the year preceding the school year in which open enrollment will take place. Iowa Code §282.18(2) (1995). We have previously stated that the use of the term "application" in the statute is a misnomer because it implies that the parents seek Board approval of the open enrollment request. In re Amanda and Emily Lyman, 9 D.o.E. App. Dec. 118, 119 (1991).

In re Amanda and Emily Lyman, *supra*, was an early open enrollment appeal which also involved the Exira Community School District. In that appeal, the State Board clearly stated that "[i]f the form is timely filed, the resident district board has no discretion to deny the open enrollment, unless the district is under voluntary or court-ordered desegregation. That exception is not applicable in this case. Therefore, there is literally no reason to be found in the law for the board to deny Appellants' 'requests'" Id.

When open enrollment applications are timely-filed, the resident school district is required to act on the open enrollment requests "by no later than November 30 of the year preceding the school year for which the request is made." 281--IAC §17.3(2). "Tabling" the timely-filed open enrollment requests is synonymous with denying the requests for purposes of appeal. In re Jed and Tessa Thompson, 10 D.o.E. App. Dec. 195 (1993).

All three sets of parents knew the law and promptly appealed to the State Board of Education as soon as their requests were tabled. The Hansens' request for their son to attend

kindergarten in the Atlantic Community School District was approved because their reason was "Family Convenience." The Ballous and Nelsons, however, were not so lucky. They learned about the disposition of their applications when they read the front page of the Audubon County Advocate Journal newspaper. They felt like they would have to appear before the "inquisition" in order to get their open enrollment requests considered by the Board. All because they had the audacity to check reason #8 which suggested that they felt the Audubon Community School District would provide "access to educational opportunities which are not available to [their] children because of where they live." See, Iowa Code §282.18(1) (1995).

In spite of Superintendent Faaborg's assertion to the contrary, there is no statement anywhere in the Open Enrollment Law that says its goal is to "foster competition between schools." There is a well-settled rule of statutory construction that legislative intent is determined "by what the legislature said, rather than what it should or might have said." Iowa R. App. P. 14(f)(13). What the legislature said in the Open Enrollment Law was that

"[i]t 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 where they live."

Iowa Code §282.18(1) (1995).

Although three of the five present Exira Board members are fairly new to their positions, Superintendent Faaborg is not. The Exira Community School District is not a stranger to open enrollment appeals.³ The above-referenced language of the Open Enrollment Law was cited verbatim in 1991 when parents appealed the Exira District's practice of denying all open enrollment applications out of the District. See, In re James and Sarah Burgin, 9 D.o.E. App. Dec. 126, 127-128 (1991).

It is not appropriate, and is in fact beyond the school board's authority, to impose additional conditions on parents

³See, In re Amanda and Emily Lynam, 9 D.o.E. App. Dec. 118 (1991); In re John and Kelli Burgin, 9 D.o.E. App. Dec. 126 (1991); In re Michael Ballou, Rayn and Megan Irlmeier, Katrina and Molly Jensen, Maegan and Shanon Roy, 9 D.o.E. App. Dec. 185 (1992).

exercising their rights under the Statute. In re Jenny Feldman, 11 D.o.E. App. Dec. 141, 142 (1994). The Open Enrollment statute is not subject to arbitrary, or capricious selective implementation. It is the Law. This is not the first time that the Exira School District has been reminded of their obligation under the Open Enrollment Law. See, fn. 3, supra. We sincerely hope the members of the Exira Board of Education will not repeat the mistakes of the past.


The Appellants in this case have been inconvenienced at best and at worst, have had their lives upset in one or more ways because of the Board's position on their open enrollment applications. Perhaps this is because the members of the Board do not have the opportunity, as we do on the hearing panel, to hear the anguish and frustration, and in many cases, the tears of parents who are forced to go through the appeal process to enforce their legal right to choose a school district they feel is best for their children. If there was any way to compensate the Appellants for their time and inconvenience, the hearing panel would suggest that the State Board order it.

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

**III.
Decision**

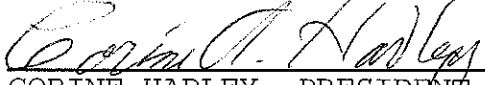
For the foregoing reasons, the decisions of the Board of Directors of the Exira Community School District denying the open enrollment for Appellants' children for the 1996-97 school year are hereby recommended for reversal. There are no costs of this appeal under Iowa Code § 290 to be assigned.

1-26-96
DATE


ANN MARIE BRICK, J.D.
ADMINISTRATIVE LAW JUDGE

It is so ordered.

2-8-96
DATE


CORINE HADLEY, PRESIDENT
STATE BOARD OF EDUCATION