

**Iowa State Board
of Education**

(Cite as 13 D.o.E. App. Dec. 1)

In re Michael Hernandez	:	
Jesse and Elaine Hernandez,	:	
Appellants,	:	
 	:	
v.	:	
 	:	DECISION
Iowa City Community	:	
School District,	:	
Appellee.	:	[Adm. Doc. # 3682]

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, Jesse and Elaine Hernandez, were "present" telephonically, unrepresented by counsel. Appellee, Iowa City Community School District [hereinafter "the District"], was also "present" in the persons of Dr. Barbara Grohe, Superintendent; Tim Grieves, Assistant Superintendent; Jerald Palmer, Board Secretary; and John Cruise, Attorney.

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 and chapter 290. Appellants seek reversal of the decision of the board of directors [hereinafter "the Board"] of the District, made on November 28, 1995, denying Appellants' request for open enrollment into the District for their son, Michael, to attend kindergarten commencing with the 1996-97 school year. The denial was based on insufficient classroom space.

**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 appeal before them.

Elaine and Jesse Hernandez have two sons: Benjamin is currently attending Penn Elementary School in Iowa City as a second grader; Michael will be in kindergarten next fall. The family has lived in the town of North Liberty, which is in the Iowa City School District, for the past six years.

Appellants both have been very active in the community. Jesse is a State highway patrol officer who is also vice-president of the Optimists Club and a member of the Jay-Cees. Elaine is a registered nurse who volunteers at their local church and school. In spite of their ties to the town, Appellants have always dreamed of living on an acreage in the country. This fall when a suitable location came up for sale in their price range, they quickly made an offer. They had no concerns about being in the Iowa City School District since the home had a North Liberty address and was fairly close to Benjamin's school. Some time after their offer had been accepted, they realized they had moved three-tenths of a mile outside of the Iowa City District. Now they were in the Clear Creek-Amana School District. This change meant, among other things, that their kindergartener would be riding a school bus for over an hour each way.¹ They immediately applied for open enrollment before the October 30th deadline.

At its October 24, 1995, meeting the Board granted Benjamin's application for open enrollment but denied Michael's. Michael's application to attend kindergarten at Penn Elementary was denied under the District's policy relating to insufficient classroom space.² Benjamin's application for open enrollment was granted under Iowa Code §282.18(10), which states in pertinent part:

If a request to transfer is due to a change in family residence ... and a child who is the subject of the request, is not currently using any provision of open enrollment, the parent or guardian of the child shall have the option to have the child remain in the child's original district of residence under open enrollment with no interruption in the child's educational program.

After being denied open enrollment for Michael, Appellants appealed to the Iowa City Board and asked the Board for a closed session at the next regular meeting in order to discuss "their unique situation." Appellants also filed an appeal to the State Board of Education to preserve their option under Iowa Code chapter 290.

¹State guidelines prohibit bus rides exceeding 60 minutes for elementary students unless there is a transfer.

²Open enrollment. The Iowa City Community School District shall participate in open enrollment as required by state law based on District capacity. The determination of sufficient space to accommodate transfers shall be reviewed on a case-by-case basis. Criteria to be used by the District in its determination may include, but are not limited to, the following:

- 1.. The relationship between effective building capacity and projected enrollments;
- 2.. The financial resources of the school district;
- 3.. The qualifications and number of certificated personnel;
- 4.. Other factors deemed relevant to the situation.

The Iowa City Board met with the Appellants for 20 minutes in closed session on November 28, 1995. By unanimous decision of the members who were present, Appellants' request was denied.

At the appeal before the State Board, representatives of the District testified that Iowa City's policy on insufficient classroom space is amply supported by the facts. For example, over the past five years, 250 requests for open enrollment have been denied by the District. Penn Elementary is the most crowded elementary school in the District having five temporary buildings. It is established that there will be around 90 children attending kindergarten next year at Penn, and until the District's new elementary school opens next fall, there will not be enough space to provide all-day kindergarten for the students at Penn; a program the district offers at the other elementary schools. The basic position of the District boils down to this:

We have an obligation to serve our residents first. We will not accept open enrolled students until we can meet our program goals for our own District residents. We only accepted Benjamin because we had no choice under the Law. If the parents [Appellants] do not wish to split the siblings between two districts, they don't have to. They can send Benjamin to the Clear Creek-Amana School District with Michael.

The parents counter the District's argument by stating that the 90 children estimated to attend Penn next fall is the same number (no greater) than the District has estimated every year for the past three years. Appellants ask that Michael's application be considered and reviewed on a "case-by-case basis" under the Board's policy. See, fn. 2, supra. They would like the District to make an exception for their child to avoid cutting him off from the community he has grown up in and sending him to an unfamiliar school which is over an hour's bus ride away. The parents argue that this is not a situation where they are living in a neighborhood full of families who all want to open enroll to Iowa City. They live on an acreage and are the only ones in the area with school-aged children. Under these unique circumstances, the parents argue that it is unreasonable for the District to expect them to pull Benjamin out of the Iowa City Schools where he has spent the last three years, or split this family between two districts.

Upon questioning from the hearing panel, the District stated that its policies do not recognize any additional rights for the siblings of those students granted open enrollment under the "continuation law." In addition, the District produced no evidence that this situation has ever occurred before. If it has occurred, there have been no appeals, so the situation has never been addressed.

II. CONCLUSIONS OF LAW

This case represents the need to balance two important interests under the Open Enrollment Law: the legislative mandate that parents who move have the option to have their children remain in the child's original district of residence "with no interruption in the child's educational program" [§282.18(10)] and the ability of the receiving district to deny open enrollment applications when there is "insufficient classroom space in the District." [§282.18(7); §282.18(13)].

This case is problematic because the law requires approval for Benjamin's application, but does not require the District to approve Michael's application. Even though the District's policy on insufficient classroom space would permit the approval of Michael's application under the "case-by-case" criterion -- the District chose not to do that. Although we have always deferred to the District's determination to deny open enrollment applications³ because of insufficient classroom space, we think this situation is unique.

Iowa Code §282.18(20) allows the State Board to ignore the general limitations contained in the Open Enrollment Law to serve the best interests of the child. Indeed, the law states that

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.

Id.

Even so, subsection (20) has been deemed an extraordinary power to be used sparingly. "[W]henever a child's unique situation cries out for State Board intervention," this discretionary power is ripe to be exercised. In re Caylee and Cadie King, 11 D.o.E. App. Dec. 389, 391 (1994) (citing In re Cameron Kroemer, 9 D.o.E. App. Dec. 302, 308 (1992)). It is for situations that the General Assembly was unable to envision, not unwilling to include. Id.

Because the circumstances underlying this case are so unique, we feel that the best interest of Michael will best be served if he is allowed to commence his education in the community where he has lived with his family for the past six years and where he now attends preschool. This also serves the important

³See, e.g. In re Katie Wernette, 12 D.o.E. App. Dec. 351; In re Caitlin Miller, 12 D.o.E. App. Dec. 332; In re Lin Weeks/In re Rosemary Norman, 12 D.o.E. App. Dec. 156.

policy as stressed by the State Board that siblings not be separated as a result of the operation of the Open Enrollment Law.⁴

For the reasons discussed above, the hearing panel recommends that Michael Hernandez not be denied open enrollment into the Iowa City Community School District because of the Board's policy on insufficient classroom space. However, Michael can be denied admittance to the Penn Elementary School. Pursuant to 281--Iowa Administrative Code 17.6(4): The right of a parent/guardian to request open enrollment is to a district other than the district of residence, not to an attendance center within the non-resident district. In accepting an open-enrollment pupil, the receiving district board has the same authority it has in regard to its resident pupils as provided by Iowa Code §279.11, to "determine the particular school which each child shall attend." In the application process, however, the parent or guardian may request an attendance center of preference.

Superintendent Grohe and Associate Superintendent Grieves made it clear at the hearing that the Hernandez' should not expect Michael to attend Penn Elementary if he wins his appeal. The District representatives made this statement, not to intimidate the Appellants, but to advise them that there will be some redistricting of all students next fall as a result of the opening of the new elementary school. At that time, there will be an effort to equalize the populations at the various schools. It is also possible that this fact will change the desire of Appellants to pursue open enrollment to the Iowa City District. In any event, we would like the District to understand that in reversing their denial of the open enrollment application, we are not disturbing their right to assign their students to whatever attendance center is most appropriate ... whether these students are residents or non-residents. To require the District to accept Michael Hernandez into Penn Elementary would improperly elevate the rights of open enrolled students over those of the resident pupils. If the Hernandezes wish to exercise their right to open enroll Michael into the Iowa City Community School District next fall, they will have to be willing to accept whatever attendance center the District designates for him.

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

⁴See, e.g., In re Christina Henry, 12 D.o.E. App. Dec. 162; In re Jordan Bright, 11 D.o.E. App. Dec. 195.

**III.
Decision**

For the foregoing reasons, the November 28, 1995, decision of the Board of Directors of the Iowa City Community School District denying the open enrollment application of Michael Hernandez on the basis of insufficient classroom space, is hereby recommended for reversal. However, the District has an absolute right to assign the pupil to whatever attendance center it feels necessary to equalize the educational opportunities for the residents of the District. There are no costs of this appeal under Iowa Code § 290 to be assigned.

1-26-96
DATE

Ann Marie Brick
ANN MARIE BRICK, J.D.
ADMINISTRATIVE LAW JUDGE

It is so ordered.

2-8-96
DATE

Corine Hadley
CORINE HADLEY, PRESIDENT
STATE BOARD OF EDUCATION