IOWA STATE BOARD
OF EDUCATION

In re Dustin Krutsinger	:	
Anita Krutsinger,	:	
Appellant,	:	
v.	:	NOTICE OF APPEAL HEARING
Russell Community	:	
School District, Appellee.	:	[Admin. Doc. #3645]

TO: Anita Krutsinger, Superintendent Robert McCurdy, and Board Secretary Kathy Mills

You are hereby notified that the above entitled matter has been set down for telephonic hearing on the 25th day of May, 1995, at 2:00 p.m. The hearing panel will be comprised of Dr. David Wright and Ms. Mary Ann Kaspaska, consultants, Office of Educational Services for Children, Families and Communities; and Ann Marie Brick, J.D., legal consultant and administrative law judge, presiding.

The authority and jurisdiction for this appeal are found in Iowa Code section 282.18(5).

Appellant requests a hearing regarding Appellee's denial of open enrollment of her child.

If you have any questions or need any assistance with this matter, please feel free to contact me.

Jeannie M. Ramirez
Administrative Assistant II
Department of Education
Grimes State Office Building
Des Moines, Iowa 50319-0146
(515) 281-5295

OF EDUCATION

In re Dustin Krutsinger	:	
Anita Krutsinger,	:	
Appellant,	:	
v.	:	NOTICE OF APPEAL HEARING
Russell Community	:	
School District, Appellee.	:	[Admin. Doc. #3645]

TO: Anita Krutsinger, Superintendent Robert McCurdy, and Board Secretary Kathy Mills

You are hereby notified that the above entitled matter has been set down for telephonic hearing on the 25th day of May, 1995, at 2:00 p.m. The hearing panel will be comprised of Dr. David Wright and Ms. Mary Ann Kaspaska, consultants, Office of Educational Services for Children, Families and Communities; and Ann Marie Brick, J.D., legal consultant and administrative law judge, presiding.

The authority and jurisdiction for this appeal are found in Iowa Code section 282.18(5).

Appellant requests a hearing regarding Appellee's denial of open enrollment of her child.

If you have any questions or need any assistance with this matter, please feel free to contact me.

Jeannie M. Ramirez
Administrative Assistant II
Department of Education
Grimes State Office Building
Des Moines, Iowa 50319-0146
(515) 281-5295

Iowa State Department of Education

In re Dustin Krutsinger	:	
Anita Krutsinger,	:	
Appellant,	:	
v.	:	
	:	DECISION
Russell Community School District,	:	
Appellee.	:	[Adm. Doc. # 3645]

The above-captioned matter was heard telephonically on May 25, 1995, before a hearing panel comprising Ms. Mary Ann Kapaska and Dr. David Wright, consultants, Office of Educational Services for Children, Families, and Communities; and Ann Marie Brick, J.D., legal consultant and designated administrative law judge, presiding. The Appellant was "present" telephonically, unrepresented by counsel. Appellee, Russell Community School District [hereinafter "the District"], was also "present" in the person of Dr. Robert McCurdy, also *pro se.*

A hearing was held pursuant to Departmental Rules found at 281 Iowa Administrative Code chapter 6. Appellant seeks reversal of a decision of the board of directors [hereinafter "the Board"] of the District made on April 10, 1995, denying her applications for open enrollment out of the District beginning in the 1995-96 school year. Authority and jurisdiction for the appeal are found in Iowa Code § 282.18(5)(1995).

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 before them.

Anita Krutsinger is the mother of three children who live and attend school in the Russell Community School District. At the time she filed her application for open enrollment, Dustin was enrolled as a sixth grader. Her other two children were enrolled in the second and fifth grades at Russell, but she is not seeking open enrollment for them. She filed an open enrollment application on behalf of Dustin because she wants him to attend school in Chariton, commencing in the Fall of 1995.

Dustin has been identified as "talented and gifted," and was

suppose to participate in enrichment activities over the past school year. In April, Ms. Krutsinger learned that the "Challenge Program," as it is called, had been changed drastically from previous years.[1] Instead of group interaction with the TAG teacher, each student was assigned a project to complete independently. Ms. Krutsinger testified that most of the students, including Dustin, did not complete their projects -- and didn't seem to realize any benefit from the Program. As a result, Ms. Krutsinger wants Dustin to attend seventh grade in Chariton where she feels he will "benefit from an educational program [TAG] not available in her own district."

She applied for open enrollment on April 10, 1995, and was denied on the same date for being "late without good cause." Ms. Krutsinger appealed the Board's decision on the ground that the Board's denial was "arbitrary and capricious" since a late application was approved by the Board one year ago and the reasons for the open enrollment request were the same as hers. The only difference in the cases was the gender of the students. The Board granted the applications for two girls in 1994; but Ms. Krutsinger feels that Dustin's application was denied because the District does not want to lose any more male students. She supports this assertion but stating that the sixth grade class in 1994-95 was made up of fifteen students; five boys and ten girls. One of the boys has already open enrolled out for next year. If Dustin's application is approved, there would only be three male seventh graders in the Russell School District.

Superintendent McCurdy did not deny that the Board allowed a late application out of the District last Spring. When pressed for Board minutes or details which would distinguish that case from the present one, he couldn't recall any "good cause" reasons present in the 1994 approvals. He testified as follows:

> The Board approved the late applications trying to help somebody. They had some conversations outside of the Board meeting and the parents wished to have this happen. But the parents had kind of indicated that before school started, they would change their minds and stay. With that in mind, they [the Board] went ahead and approved the application late. We haven't heard from them [the parents] since.

(McCurdy testimony at hearing.)

II.
CONCLUSIONS OF LAW

1This was Dustin's first year in the program.

At the time the open enrollment law was written, the legislature recognized that certain events would prevent a parent from meeting the October 30 deadline. There is an exception in the statute allowing late enrollment if parents or guardians have "good cause" for missing the October 30 deadline. Iowa Code § 282.18(18) (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. One of those provisions applies in this case:

> ... a change in a child's residence due to a change in family residence, [or] a change in the state in which the family residence is located ... .

Id. at subsection (18).

Neither party in this appeal takes issue with either the presence or absence of a statutory "good cause" excuse for the Krutsinger's late application. To summarize Appellant's contention on appeal: She would like Dustin to attend Chariton so that he can receive a talented and gifted program which she does not believe is present at the Russell Community School District. She feels she has a right to have this request granted by the Board because they did it for someone with "similar reasons for open enrolling" last year. "Those people weren't required to show good cause, so why should I?" summarizes Ms. Krutsinger's argument on appeal.

Although Ms. Krutsinger was not represented by counsel in this case, she presented a legal position which challenges the crux of a school board's authority. In her view, "good cause" may not have existed for her late filing, but it did not exist in previous applications that were granted by the Board in 1994. Because it granted open enrollment applications which did not meet the Board's policy definition of "good cause," Appellant contends that the Board's failure to approve her application amounted to "arbitrary and capricious" action. We are inclined to agree.

A school board is free to adopt policies and rules for its own governance and that of the District, its students and employees. Iowa Code § 279.8 (1995). The only real limitations on the Board's power are that the subject matter of the rule must be within the Board's authority to govern and the rule itself must be reasonable. Board v. Green, 259 Iowa 1260, 147 N.W. 2d 854 (1967). A school board does not have unfettered discretion and

must adopt policies to guide it in the exercise of its discretion. There are two reasons cited as justification for the requirement that a board adopt policies: First, to put the District and all constituencies on notice as to the board's general views on a given

subject so that those entities can govern themselves accordingly, and secondly, to guide the board in its own decision making. See, In re Anthony Schultz, 9 D.o.E. App. Dec. 381 (1992).

> Board policies are seldom written in stone and can be amended as easily as they were adopted. Also, because the board creates the policies, it alone has the ability to deviate or make exceptions to the policies when an unanticipated fact situation occurs, or when wisdom would dictate a deviation is necessary.
>
> ...
>
> We have no quarrel, therefore, with the Board's decisions (at least two of them) to depart from their announced and existing policy on open enrollment and, particularly, late applications. The problem arises because the Board apparently made willy-nilly exceptions to its own policy. ...

Id. at 385.

The Board had the power to deviate from its own policy, but it had the obligation to state the facts that warranted such a departure. In that way, a waiver of the late filing deadline would not be binding on subsequent situations unless they were identical to the fact pattern described by the Board when it deviated from its policy. In the present case, the Superintendent acknowledged that the Board does not keep detailed minutes about decisions to grant or deny these open enrollment requests. Because of that, Appellant is left to presume that the reason the Board did not grant her late application when it granted an earlier one, had something to do with the gender of her child. It is very difficult for the Board to refute that assertion when there are no minutes which would give us the real basis for their earlier decision.[2]

The term, "arbitrary and capricious" means "without regard to established rules or standards." Churchill Truck Lines, Inc. v. Transportation Regulation Board, 274 N.W.2d 295, 299-300 (Iowa 1979). It implies that the decision was made upon whim, fancy, or some unarticulated preference. It suggests, in this case,

that the Board applied its policy regarding "good cause" for late open enrollment more on the basis of who's asking than on the reason for the tardy paperwork. In re Anthony Schultz, supra, at 386.[3]

2We would also like to caution the Board members about acting upon "conversations with parents outside of the Board meeting" unless the basis of their action is also recorded in the Board minutes. This will also reduce allegations that a violation of the Open Meetings Law has occurred.

3A school board can deviate from its own policy. However, when it does, it has set a precedent

Because we agree with Appellant that the Board's decision in this case was made arbitrarily, we will recommend that the director overturn the Board's decision.

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

III.
Decision

For the foregoing reasons, the April 10, 1995, decision of the Board of Directors of the Russell Community School District denying Appellant's late request for open enrollment to Chariton Community School District for her son, Dustin, is hereby recommended for reversal. There are no costs of this appeal under Iowa Code § 290 to be assigned.

DATE

ANN MARIE BRICK, J.D.
ADMINISTRATIVE LAW JUDGE

It is so ordered.

DATE

AL RAMIREZ, DIRECTOR
STATE DEPARTMENT OF EDUCATION

of sorts that implies the board will evaluate each late open enrollment request (for example) on its own merits. In order to avoid creating that impression, the Board can do one of two things: record in the minutes its reason(s) for deviating from the established policy in clear and narrow enough language that future requests that involve only the same factual situation will have to be treated the same. The other option is to amend its policy formally to show in exactly what circumstances exceptions will be made.