

IOWA STATE BOARD
OF EDUCATION

In re Eavan Hamilton	:	
	:	
Dale & Debra Hamilton,	:	
Appellants,	:	
	:	
v.	:	NOTICE OF APPEAL HEARING
	:	
Pleasant Valley Community	:	
School District, Appellee.	:	[Admin. Doc. #3612]

TO: Dale & Debra Hamilton, Superintendent Dale Barber, and Board Secretary Christine Harvey

You are hereby notified that the above entitled matter has been set down for telephonic hearing on the 16th day of February, 1995, at 10:45 a.m. The hearing panel will be comprised of Edie Eckles, consultant, Bureau of School Administration and Accreditation; Don Wederquist, consultant, Bureau of Educational and Student Services; 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 290.1.

Appellants request a hearing regarding Appellee's denial of open enrollment of their child due to insufficient classroom space.

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

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(Cite as 12 D.o.E. App. Dec. 205)

In re Eavan Hamilton

Dale & Debra Hamilton, :
Appellants, :

v. :

DECISION

Pleasant Valley Community :
School District, :
Appellee. :

[Admin. Doc. #3612]

The above-captioned matter was heard telephonically on February 16, 1995, before a hearing panel comprising Edie Eckles, consultant, Bureau of School Administration and Accreditation; Don Wederquist, consultant, Bureau of Educational and Student Services; and Ann Marie Brick, legal consultant and designated administrative law judge, presiding. Appellant, Debra Hamilton, was "present" by telephone, unrepresented by counsel. Appellee, Pleasant Valley Community School District [hereinafter "the District"], was also "present" on the telephone, in the persons of Superintendent Dale Barber and Christine Harvey, Secretary of the School Board, also *pro se*.

An evidentiary hearing was held pursuant to departmental rules found at 281 Iowa Administrative Code chapter 6. Authority and jurisdiction for the appeal are found in Iowa Code section 282.18 and chapter 290. Appellant seeks reversal of the decision of the board of directors [hereinafter "the Board"] of the District, made on December 5, 1994, denying Appellants' request for open enrollment into the District for their son, Eavan, on the ground of 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.

Eavan Hamilton is in the first grade at Armstrong Elementary School in the Bettendorf Community School District. His school is approximately 1.9 miles to the west of the Hamilton's home.

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The Hamiltons timely filed their application for Eavan to attend Riverdale Heights Elementary School for the Fall of 1995. Riverdale Heights Elementary School is a new school, presently under construction, and is only .6 mile from their home. Although

Bettendorf approved the Hamilton's open enrollment application, it was denied by Pleasant Valley Community School District under its Board policy pertaining to insufficient classroom space.

The Hamiltons live in the Deerbrook subdivision, which is bisected by the southern boundary of the Pleasant Valley Community School District. The children living in the southern one-third of the subdivision attend the Bettendorf schools. The children living in the northern two-thirds of the subdivision attend school in Pleasant Valley. The Hamiltons live in the southern part of Deerbrook. Ms. Hamilton testified that she wants her son to be able to attend school at Riverdale Heights next year so he can go to school with his neighbors and friends. She testified that the boundary lines for the Riverdale Heights School are to be newly drawn. She stated that the present boundaries contribute to the duplication of bus services. For example, school buses from both districts travel down her street -- two buses for each level of schooling -- one for each district. Ms. Hamilton contends that until the new boundary lines are drawn, the District cannot substantiate its position that there is insufficient classroom space for her son in Riverdale Heights next year.

Mr. Dale Barber, Superintendent of the District, testified that the Board's policy on insufficient classroom space has been to deny open enrollment requests due to lack of classroom space at the elementary level. However, Pleasant Valley has been receiving students at the junior high and high school levels. He testified that the District is experiencing steady growth at the south-end of its district, but there is more room at the two elementary schools at the north-end of the district, Cody and Bridgeview. Superintendent Barber stated that there are several new housing developments being constructed in the Riverdale Heights attendance area and the District feels it needs to reserve space to accommodate new students moving into the District. He also stated that there are students in the Riverdale Heights attendance area that are being bused to the north-end of the District to equalize the population. He offered that the Hamiltons' could open enroll to Pleasant Valley if they wanted to attend either Cody or Bridgeview elementary schools in the northern part of the District. However, since Ms. Hamilton was adamant that she wanted a neighborhood school, which Riverdale Heights would provide, she would not be interested in attending either of the elementary schools in the northern part of the District.

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II. Conclusions of Law

When the General Assembly passed the Open Enrollment Law, it included a provision allowing a school district to refuse open enrollment into the District "if the receiving district does not have classroom space for the pupil." Iowa Code § 282.18(4)

(1995) (The board of the receiving school district shall enroll the pupil in a school in the receiving district for the following school year, unless the receiving district does not have classroom space for the pupil.) Id. Iowa Code § 282.18(13) then states:

[e]very school district shall adopt a policy which defines the term "insufficient classroom space" for that district. (Emphasis added.)

The Department's Administrative Rules implementing this provision of the Code are contained at 281--IAC 17.6(3). The Rules state as follows:

Policy on insufficient classroom space. No receiving district shall be required to accept an open enrollment transfer request if it has insufficient classroom space to accommodate the pupil(s). Each district board shall adopt a policy which defines the term "insufficient classroom space" for that district. This policy shall establish a basis for the district to make determinations on the acceptance or denial, as a receiving district, of an open enrollment transfer request. This policy may include, but shall not be limited to, one or more of the following: nature of the educational program, grade level, available instructional staff, instructional method, physical space, pupil-teacher ratio, equipment and materials, facilities either being planned or under construction, facilities planned to be closed, finances available, sharing agreement in force or planned, bargaining agreement in force, law or rules governing special education class size, or board-adopted district educational goals and objectives. This policy shall be reviewed annually by the district board.

The Pleasant Valley Community School District's policy pertaining to "open enrollment as a receiving district" is contained in Board policy 501.6B. Although the policy comprises two and a half pages, there is only one line devoted to insufficient classroom space. It states:

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Open enrollment requests into the school district will not be approved if insufficient classroom space exists.

The remainder of the policy on open enrollment as a receiving district pertains to eligibility, suspended students and open enrollment requests to Pleasant Valley as an alternative receiving district. Board Policy 501.6B.

As we have just stated in the most recent "insufficient classroom space/open enrollment appeal," it is highly responsible for the District Board to recognize that an influx of open enrollment students can have an adverse impact on the quality of education the District provides to its resident students. In re Dana D'Andre, 12 D.o.E. App. Dec. 199, 202 (1995). However, in the D'Andre case, the Board's policy on insufficient classroom space included numerous factors that could be considered in denying the open enrollment application as a receiving district. In the present case, there are no factors which can be looked at in deciding the open enrollment issue. Contrary to Iowa Code § 282.18(13) which directs every school district to adopt a policy defining "insufficient classroom space," and contrary to the Department's Administrative Rules listing the numerous factors that could be considered in drafting such a policy, the Pleasant Valley policy at issue here contains no criteria defining insufficient classroom space. Therefore, the Hamiltons' application cannot be denied under the Board policy as it is presently written because we cannot review how the Board determined insufficient classroom space exists.

Although the Hamiltons cannot be denied open enrollment into the Pleasant Valley Community School District because of the present Board policy on insufficient classroom space, they can be denied admittance to the Riverdale Heights 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.

Id.

Superintendent Barber testified that it is necessary to bus children from the southern part of the District to the less populated elementary schools in the north. This is done to equalize the populations between the rapidly growing southern part of the District and the more stable northern part. We cannot give non-resident pupils greater rights than those enjoyed by the resident pupils. If the Hamiltons wish to exercise their right to open enroll Eavan into the Pleasant Valley Community School District next fall, they will have to be willing to accept whatever attendance center the

District designates for them.

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

**III.
Decision**

For the foregoing reasons, the December 5, 1994, decision of the Board of Directors of the Pleasant Valley Community School District, to deny the open enrollment application of Eavan Hamilton 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 is necessary to equalize the educational opportunities for the residents of the District. There are no costs to this appeal to be assigned.

Date

Ann Marie Brick, J.D.
Administrative Law Judge

It is so ordered.

Date

Ron McGauvran, President
State Board of Education