

**Iowa State Board
of Education**

(Cite as 12 D.o.E. App. Dec. 193)

<i>In re Ashley & Roman Buhr</i>	:	
Annette Buhr, Appellants,	:	
v.	:	DECISION
Sumner Community School District, Appellee.	:	[Adm. Doc. #3553]

The above-captioned matter was heard telephonically on December 2, 1994, before a hearing panel comprising Terry Voy, consultant, Bureau of School Administration and Accreditation; Roger Foelske, chief, Bureau of Technical and Vocational Education; and Ann Marie Brick, legal consultant and designated administrative law judge, presiding. Appellant was "present" by telephone, unrepresented by counsel. Appellee, Sumner Community School District [hereinafter "the District"], was also "present" by telephone in the person of Superintendent Donald Miller, also *pro se*.

An evidentiary hearing was held in accordance with departmental rules found at 281 Iowa Administrative Code 6. Authority and jurisdiction for the appeal are found in Iowa Code § 282.18(5) and chapter 290.

Appellant seeks reversal of a decision of the board of directors [hereinafter "the Board"] of the District made on September 19, 1994, denying the Appellant's late request for open enrollment for Ashley Buhr and Roman Buhr to Maynard Community School District beginning in the Fall of the 1994-95 school year.

**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.

Ashley Buhr is a 12-year-old 7th grader and her brother, Roman, is an 11-year-old 5th grader. Roman is a special education student, classified as "mild mentally disabled." His status as a special education student is the basis for this appeal.

Although the Buhrs have lived in the Sumner Community School District for the past 11 years, Roman never attended school there. His special education classes were located in Tripoli; Ashley attended in Sumner. Last May 26, Mrs. Buhr received a letter from the coordinator of special education at AEA 7, which stated as follows:

In order to continue the process of educating students in need of special education in their home school, AEA 7 and Sumner Community School District are adding an additional classroom option in Sumner. Part of the impact of this is the capacity for providing service in-district for some of the students currently schooled in Tripoli. At this point, we are planning to have your child served at Durant Elementary in Sumner next year. Your new teacher will be Mrs. Connie Collins. We will attempt to supply additional information in the near future.

Please feel free to call me if you have any questions.

Mrs. Buhr testified that she waited all summer, but no further information was sent to her. She then called James Reed, the special education coordinator at AEA 7, and asked what was going on. She was told that Roman would be attending the program in Sumner in the Fall. The Buhrs then began looking for other options.

Mrs. Buhr testified that she didn't have confidence in the Sumner program "because this is the first year. They are going to be going through a trial-and-error period." She didn't think the Sumner students had been properly prepared to have a special education class there and she was afraid that they would make fun of Roman.¹ Mrs. Buhr expressed concern about the lack of training on the part of the teachers and the fact that she was unfamiliar with Roman's "new teacher."

There seemed to be another factor which prompted the Buhrs' decision to open enroll to Maynard. Mrs. Buhr testified that they had moved to the country about a year before they were

¹In fact, Mr. Reed testified that Sumner has had a special education class for severely mentally disabled students but because Roman's disability was "mild," he had not qualified to attend that program in Sumner. The new program at Sumner was for "mild mentally disabled" students, which they had never had before. However, the Sumner students were accustomed to having special ed students around.

notified of the change in Roman's program. As a result of the move, Roman was picked up by the bus around 7:20 a.m. to 7:30 a.m.; transported to Sumner, where he waited to catch the bus to

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Tripoli at 8:10 a.m. She was concerned about some incidents which had occurred on the bus -- kids teasing Roman and so forth. Their move to the country had placed them close to the Maynard Community School District boundary which shortened Roman's bus ride considerably. So, the option that looked most appealing to them was to open enroll both children to the Maynard Community School District. Maynard already had a special education program in place that would suit Roman and both children could then ride the bus together and attend school in the same district.

In August, the Buhrs filed their applications for Ashley and Roman to open enroll to Maynard. These applications were denied at the September 19, 1994, Sumner School District Board meeting. The Buhrs' applications for 1995-96 have been approved.

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

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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).

Unfortunately, the application for open enrollment under this "good cause" exception must be filed by June 30. Mrs. Buhr was notified on May 26, 1994, of the change in Roman's attendance center. Although it is true that the letter stated that additional information would be supplied in the future, there was very little question from the body of the note that the decision to relocate Roman's program had already been made. At that point, Mrs. Buhr had two options:

- (1) She could have applied for open enrollment by June 30th and argued that "good cause" existed to grant the applications. The school district would not be obligated to grant the application for Ashley because her situation would not come within the purview of the "good cause" exception.² The Board could also have denied Roman's application for open enrollment under § 17.4(3) of the Administrative Rules which states that "[a]ctions of a board of education and the designation of attendance centers within a school corporation and in the assignment of pupils to such centers. . . . is not a similar set of circumstances constituting "good cause" relating to a change in the residence of the pupil.
- (2) The second option available to Mrs. Buhr and the one that would have been most beneficial to the parties involved, would be to seek a due process hearing with AEA 7 under the provision of the special education rules which states as follows:

Written notice required. Written notice must be given to parents a reasonable time before the agency proposes or refuses to initiate or change the identification, evaluation, educational placement or to provide a free appropriate public education. A change in educational placement in-

²The separation of siblings has never been held to constitute "good cause" under this provision of the statute.

cludes any change in the disability type, model or attendance center of the program, other than typical progression through the grades or program levels, which is recommended for an individual pupil. ...

281--IAC 41.31(6). (Emphasis added).

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We are unable to provide Appellant with the relief she seeks. Even if the State Board of Education were to use its subsection 20 power and in spite of the June 30 deadline "exercise broad discretion to achieve just and equitable results which are in the best interests of the affected child or children," we have no basis to assume that the Sumner program would be inadequate to meet Roman's needs. This is a decision that can best be made by those responsible for developing Roman's individualized educational program at the local level. By unilaterally moving Roman to the Maynard Community School District, Appellant changed his educational program from AEA 7 to AEA 1. This deprived the Sumner Community School District, as well as AEA 7, from complying with § 282.18(9) of the Open Enrollment Law which states as follows:

If a request filed under this section is for a child requiring special education under chapter 256B, the request to transfer to the other district shall only be granted if the receiving district maintains a special education instructional program which is appropriate to meet the child's educational needs and the enrollment of the child in the receiving district's program would not cause the size of the class in that special education instructional program in the receiving district to exceed the maximum class size in rules adopted by the state board of education for that program. ...

Iowa Code § 282.18(9) (1995).

Certainly Superintendent Donald Miller must have felt like he was caught in the middle when Mrs. Buhr stated to him during the hearing: "We're suppose to notify the school a year ahead of time for open enrollment... I think it would have only been fair for you to notify us a year ahead of time that you were going to change this program."³ Although we agree with Mrs. Buhr that the

³Jim Reed, the special education coordinator for AEA 7, was present at the hearing and he apologized to Mrs. Buhr for the lack of appropriate communication regarding the change in program. He agreed to attempt to coordinate a better communication system between the parents of these special education students so that a similar situation did not occur in the future.

rules of open enrollment don't always seem fair, we're not in the best position to judge what is fairest for Roman in this situation. If the issue is whether the Sumner program is appropriate for his needs, that issue can best be decided by an administrative law judge appointed for a special education due process hearing. There are no circumstances present which would persuade us to find "good cause" for granting Ashley's late application for open enrollment.

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

**III.
Decision**

For the reasons stated above, the decision of the Board of Directors of the Sumner Community School District, made on September 19, 1994, denying the open enrollment applications of Ashley and Roman Buhr is hereby recommended for affirmance. There are no costs of this appeal to be assigned under Iowa Code § 290.4.

Date

Ann Marie Brick, J.D.
Administrative Law Judge

It is so ordered.

Date

Ron McGauvran, President
State Board of Education