IOWA STATE BOARD
OF EDUCATION
(Cite as 12 D.o.E. App. Dec. 150)

In re Shawn & Derek Swenson :

Stanley Swenson, Appellant, :
:
v. DECISION
:
Cedar Rapids Community
School District, :
Appellee. [Admin. Doc. # 3540]

The above-captioned matter was heard telephonically on November 29, 1994, before a hearing panel comprising Milt Wilson and Jim Tyson, consultants, Bureau of School Administration and Accreditation; and Ann Marie Brick, legal consultant and designated administrative law judge, presiding. Appellant was "present" by telephone, unrepresented by counsel. Appellee, Cedar Rapids Community School District [hereinafter, "the District"], was also present by telephone in the person of Nelson Evans, Director of Student Services, 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 at 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 August 21, 1994,[1] denying the Appellant's late request for open enrollment for Shawn Swenson and Derek Swenson to College 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 case before them.

1The District failed to send the minutes of the Board's proceedings before the hearing as requested by letter dated September 20, 1994. The hearing panel again requested the minutes, but no minutes have been received to date. We did not want to further delay this decision, so we proceeded without a formal "transcript" of the Board's proceedings. There is a dispute in the record whether the Board met and denied the application on August 21st or August 22nd. In any event, the appeal was timely filed for jurisdictional purposes.

The two young men who are the subject of this appeal are Shawn and Derek Swenson. Shawn is a junior in high school and his younger brother, Derek, is in the eighth grade. Shawn and Derek resided with their mother, Sheryl Bartlett, and step-father, Chuck Bartlett, in Pleasanton, California until August 16, 1994, when they were relocated to Cedar Rapids, Iowa, to live with their father, Appellant Stanley Swenson. The reason for their move to Cedar Rapids was the hospitalization of their mother on August 9, 1994. She was terminally ill with cancer and passed away on August 20, 1994.

Mr. Swenson and his second wife, Sandy, have no other children. Mr. Swenson's oldest son is 21 years old and does not reside with them. The divorce decree established Mr. Swenson as the boys' custodian and legal guardian in the event of their mother's death. That provision became operative on August 20, 1994. As soon as the boys moved to Cedar Rapids, Appellant and his wife focused on finding the school setting which would best suit the boys' needs. With only a few days before the start of school, the family weighed their alternatives and chose the College Community School District. They began the process of getting Shawn and Derek oriented and building their schedules. Appellant testified that several important factors influenced their decision:

> First the boys' campuses are co-located allowing them to be close together. We believe that due to the traumatic conditions the boys will be under in the near term, it is important this occur. Shawn can also provide transportation to and from school. Secondly, during their summer holiday visit, the boys participated in recreational activities in the Ely area and made several friends who attend Prairie. Transitioning schools is in itself a difficult situation for boys of this age, let alone with the problems they will face with the loss of their mother. To have a few established friends and familiar faces around will be a great benefit. Lastly, their step-mother, Sandy, works close to the Prairie complex, making it possible for her to help during the transition, for example, attending sessions associated with Derek's remedial reading education.

Mr. Swenson applied for open enrollment on August 18, 1994. It was denied by the Board on August 21 because it was untimely. According to Nelson Evans, the Board did not want to set a

precedent by granting this late request.[2] This appeal followed.

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) (1993).

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 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).

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[2]Time and again, we have tried to assure the district boards that when granting a late application, the board should state the particular and unique facts of the situation which prompted the board's approval. Thereafter, the board is only obligated to approve future late applications of the same factual nature. In re Anthony Schultz, 9 D.o.E. App. Dec. 381, 386 (1992).

Unfortunately, the application for open enrollment under this "good cause" exception must be filed by June 30. Because of particular circumstances surrounding the boys' relocation to Iowa in August, there was no way for Appellant to comply with this requirement. Yet there can be little question that the present situation fits the definition of "good cause."

In 1992, the General Assembly amended the open enrollment law to add the following new subsection:

> Notwithstanding the general limitations contained in this section, in appeals to the state board from decisions of school boards relating to student transfers under open enrollment, 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.

Iowa Code § 282.18(20) (1993).

The State Board has exercised its subsection 20 power in four previous cases. The first case involved the step-son of a minister whose study and work had taken him to four different locations in four years. In re Christopher Forristall, 10 D.o.E. App. Dec. 262 (1993). Christopher had not weathered the moves well, particularly when he was in a large school. His step-father was finally assigned to a church in a small community outside of the town of Ft. Dodge but the parsonage was within the school district of Ft. Dodge. Appellant wanted his step-son to attend school in the smaller district of Eagle Grove where his church and community were, but he had missed the June 30 deadline for "good cause" filing. Id. at 263. Christopher was entering his junior year, and his parents were convinced he would fare better in Eagle Grove, so they would be applying for open enrollment for his senior year anyway. In order that Chris not attend five or six different schools in as many years, the State Board used subsection (20) to order his release from Ft. Dodge for his junior year. Id. at 267.

The second case justifying the use of this special exception to the normal timelines was one involving a student who moved here from California where he had been living in an abusive situation with an alcoholic mother. In re Ann and Patrick Taylor, 10 D.o.E. App. Dec. 285 (1993). Patrick was released by the State Board after he arrived in Iowa to live with his grandparents and older siblings in August, missing the open enrollment deadline. Id. at 291. Open enrollment for Patrick was advised to keep the children together as Patrick's older brothers were attending in Lamoni under a sharing agreement. Id. at 286.

The third case involved the change in custody of a 15 year-old high school sophomore. In re Bryan Swift, 12 D.o.E. App. Dec. 24 (1994). Bryan's parents divorced when he was three years old and the court placed Bryan's physical custody with his mother. As a result of a protracted custody dispute which lasted almost a year, the court modified the custody decree to honor Bryan's wish to live with his father and attend a particular school outside of the father's attendance area. The dispute was not resolved until August 1994. The State Board used subsection 20 to grant Bryan's open enrollment request.

The fourth and final case decided under subsection 20 was In re Abrianne Long, 12 D.o.E. App. Dec. 87 (1994). The facts in the Long case are very similar to Swift. In Long, as in Swift, a high school student's change in custody decree was not entered until August. The only distinction between the two cases was the fact that unlike Bryan Swift, who had never attended school in the district to which he open enrolled, Abrianne Long attended all but 3 months (when she was with her mother) in the district to which she open enrolled.

The present situation, like those described above, presents an appropriate occasion for the use of the subsection 20 power. We therefore recommend that the State Board exercise its authority under subsection 20 and overturn the District Board's denial of Appellant's application for open enrollment from the Cedar Rapids Community School District to College Community School District.

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 Cedar Rapids Community School District made on August 21, 1994, denying the open enrollment applications for Shawn and Derek Swenson is hereby recommended for reversal. There are no costs of this appeal under Iowa Code § 290.4 to be assigned.

DATE

ANN MARIE BRICK, J.D.
ADMINISTRATIVE LAW JUDGE

It is so ordered.

DATE

RON MCGAUVRAN, PRESIDENT
STATE BOARD OF EDUCATION