

IOWA STATE BOARD
OF EDUCATION

(Cite as 12 D.o.E. App. Dec. 128)

In re Misty Deal :
Ron Deal, :
Appellant, :
v. : DECISION
Moravia Community :
School District, :
Appellee. : [Admin. Doc. # 3550]

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 Moravia Community School District [hereafter "the District"], was also "present" on the telephone in the person of Superintendent Dwight Widen, also *pro se*.

An evidentiary hearing was held pursuant to departmental rules found at 281 Iowa Administrative Code 6. Authority and jurisdiction for the appeal are found at Iowa Code § 282.18 and chapter 290.

Appellant seeks reversal of a decision of the District board of directors [hereafter "the Board"] made on September 17, 1994, denying the Appellant's late request for open enrollment for Misty Deal to Centerville 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 this appeal.

Misty Deal is a senior in high school who will graduate at the semester of the 1994-95 school year.¹ Although she has attended Moravia School District since second grade, she applied for open enrollment to the Centerville Community School District on August 20, 1994, to complete the final semester of her high school education. The reason given for the requested change of school was to "escape harassment by both students and faculty."

Appellant stated that during Misty's time in the District she has been harassed, physically threatened, and placed in direct physical danger. The specific incidents were described by Appellant as follows:

During the 1993-94 school year, when Misty was a junior at Moravia High School, the instructor of her geometry class was overheard making derogatory remarks about Misty to other students. When Misty found out about this, she was absolutely crushed and mortified that a "so-called" authority figure would do something this unprofessional and crude. Thereafter, Misty was harassed on almost a daily basis with name calling from other students, both on and off school property.

Another situation involved Misty's involvement with the swing choir at Moravia High School. She had been sick with the flu and missed two practices. The swing choir was scheduled for a performance the following weekend. Misty knew the material and routines and her instructor confirmed this. The instructor was planning to have Misty participate in the performance, but when some of the other girls in the swing choir approached the instructor and convinced her not to allow Misty to participate in the performance, the instructor acquiesced.

Appellant testified that on several occasions while walking to or from school in recent years, other students who were driving to school had swerved their cars at Misty.

He realized their intent was probably just to scare her, but he was concerned that if they had lost control of their vehicles, Misty could have been seriously hurt or killed.

He also stated that on more than one occasion, Misty has been threatened with being physically assaulted by other students of the Moravia Community School system.

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Upon questioning by the hearing panel, Appellant was reluctant to get more detailed with the specifics of the allegations. He did

¹Misty Deal enrolled in Centerville at the beginning of the 1994-95 school year and will graduate from Centerville in December 1994.

not want to describe what the geometry teacher said about Misty which had precipitated the problems during her junior year.² He did not feel that the harassment was "sexual harassment," but just general meanness on the part of the students in the community. He also stated that the "hurtful and prejudicial treatment" received by his daughter went back as far as third grade.

Mr. Deal commented that his 16 year-old son, Brad, has also been subjected to some harassment. Brad did not request open enrollment because, like his sister, he is reluctant to leave an environment he is familiar with. However, after last year, Misty decided she "couldn't take it any more." Mr. Deal has no explanation for the generally poor treatment he and his family have received in Moravia other than the fact that "Moravia is a very small town, rural community," and the Deals have been considered "outsiders." Mr. Deal is employed as an instructor by the Indian Hills Community College at the Centerville Campus. Ms. Deal was not present at the hearing and it is unclear from the record whether she, too, is employed outside of Moravia. In any event, when the parents spoke to both of their children regarding the change in schools, Misty agreed that she was ready to move. Her father attributed this to the fact that she had met some students from Centerville during the summer and felt that she might feel comfortable in making the change. Brad elected to remain in the Moravia School District and the superintendent and principal are working with him to make sure that he can have a more positive school experience.

Dr. Dwight David Widen became superintendent of Moravia in July of 1994. He and Misty discussed her decision regarding open enrollment and Dr. Widen agreed with the parents that it would be in Misty's best interest to attend Centerville. However, the Board did not feel that Misty's situation constituted "good cause" as required by the Code and denied the application.

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

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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).

²Although Mr. Deal was reluctant to describe either the general nature or the specifics of the rumors allegedly spread by Misty's geometry teacher at the hearing, he can still file a complaint with the Board of Educational Examiners and they will appoint an investigator to look into the incident.

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).

Although the State Board of Education has rulemaking authority under the open enrollment law, our rules do not expand the types of events that would constitute "good cause." The State Board has chosen to review, on appeal only, potentially "similar sets of circumstances" on a case-by-case basis. In re Ellen and Megan Van de Mark, supra at 408.

In the scores of appeals brought to the State Board following the enactment of the open enrollment law, only a few have merited reversal. We have heard nearly every reason imaginable deemed to be "good cause" by the Appellants. The State Board has refused to reverse a late application due to ignorance of the filing deadline, In re Candy Sue Crane, 8 D.o.E. App. Dec. 198 (1990); or for missing the deadline because the parent mailed the

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application to the wrong place, In re Casee Burgason, 7 D.o.E. App. Dec. 367 (1990); or when a bright young man's probation officer recommended a different school that might provide a greater challenge for him, In re Shawn and Desirea Adams, 9 D.o.E. App. Dec. 157 (1992); or when a parent became dissatisfied with a child's teachers, In re Anthony Schultz, 9 D.o.E. App. Dec. 381

(1992); or because the school was perceived as having a "bad atmosphere," In re Ben Tiller, 10 D.o.E. App. Dec. 18 (1993); or when a building was closed and the elementary and middle school grades were realigned, In re Peter and Mike Caspers, et al., 8 D.o.E. App. Dec. 115 (1990); or when a child experienced difficulty with peers and was recommended for a special education evaluation, In re Terry and Tony Gilkison, 10 D.o.E. App. Dec. 205 (1993); even when those difficulties stemmed from the fact that a student's father, a school board member, voted in an unpopular way on an issue, In re Cameron Kroemer, 9 D.o.E. App. Dec. 302 (1992). "Good cause" was not met when a parent wanted a younger child to attend in the same district as an older sibling who attended out of the district under a sharing agreement, In re Kandi Becker, 10 D.o.E. App. Dec. 285 (1993).

In this case, as in all of the others, we are not being critical of Appellant's reasons for wanting open enrollment. We are simply of a belief that the stated reasons do not meet the good cause definition, nor do they constitute a "similar set of circumstances consistent with the definition of good cause." Finally, we fail to recognize that the situation is one that "cries out for" the extraordinary exercise of power bestowed upon the State Board; this is not a case of such unique proportions that justice and fairness require the State Board to overlook the regular statutory procedures. See Iowa Code § 282.18(20) (1993).

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 Moravia Community School District made on September 17, 1994, denying the open enrollment application for Misty Deal is hereby recommended for affirmance. 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 MC GAUVVRAN, PRESIDENT
STATE BOARD OF EDUCATION