

**Iowa State Board
of Education**
(Cite as 12 D.o.E. App. Dec. 87)

In re Jeff Neuman
In re Abrienne Long

Patricia Neuman and :
Rickie Long, :
Appellants, :

v.

DECISION

George Community :
School District, :
Appellee. :

[Admin. Doc. #3543-3544]

The above-captioned matter was consolidated and was heard telephonically on November 15, 1994, before a hearing panel comprising June Harris, consultant, Bureau of Planning, Research, and Evaluation; Dennis Dykstra, consultant, Bureau of Special Education; and Ann Marie Brick, legal consultant and designated administrative law judge, presiding. Appellants were "present" by telephone, unrepresented by counsel. Appellee, George Community School District [hereinafter "the District"] was also present on the telephone, in the person of Superintendent Jerry Nichols, 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. Appellants seek reversal of the decision of the board of directors [hereinafter "the Board"] of the District made on August 25, 1994, denying the Appellants' late request to open enroll Jeff Neuman and Abrienne Long to the Central Lyon 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 appeals before them.

Appellants' applications for open enrollment were filed separately, but they were decided on the same date and appealed at the same time, so the appeals were consolidated for this hearing.

Appellant Patricia Neuman works at the Rock Rapids Health Center. Appellant Rickie Long is her fiance. Rickie has lived in his present home for about three years. He has two children; a thirteen year-old son who came to live with him a year and a half ago and who now attends Central Lyon through open enrollment; and a sixteen year-old daughter, Abrienne, who came to live with her father as the result of a change in custody decree entered two weeks before the application for open enrollment was filed.¹

About the same time that Abrienne moved in with her father, Appellant Patricia Neuman and her son, Jeff, moved in with him as well. Appellant Neuman filed for open enrollment to enable Jeff to attend the Central Lyon School District. It was the couple's hope that all three of their children could attend the Central Lyon District together. Jeff is currently enrolled in the seventh grade at Little Rock which is involved in a whole-grade sharing agreement with the George Community School District. Because of this, and because of the location of his residence, Jeff rides a school bus nine miles to George, changes buses, then rides six miles to Highway 9 where the bus drivers change, after which he completes the seven mile drive to his school in Little Rock. The process reverses every evening for the trip home. Since Mr. Long's house is only 50 feet from the Central Lyon School District and six miles from the school itself, Patricia Neuman understandably would like her son, Jeff, to attend in the closer school district.

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

¹Abrienne will be sixteen in February and is currently attending tenth grade in the George Community School District. Abrienne's mother now lives in Chamberlain, South Dakota, where Abrienne attended school for a short time last year. Prior to that move Abrienne had attended school all her life in the Central Lyon Community School District. One of the reasons the Court awarded custody to Abrienne's father was to honor her wish to attend Central Lyon for the remainder of her high school education.

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).

Unfortunately, the application for open enrollment under this "good cause" exception must be filed by June 30th. Although both appeals were filed at the same time, they must be analyzed separately to address the "good cause" requirement under the law.

Jeff Neuman

Jeff has always attended school in the George Community School District. While his change of residence over the summer may have aggravated a transportation hardship, it is not hardship unique to children attending districts with whole-grade sharing agreements.

As noted above, the "good cause" exception for late open enrollment application is only operable between October 30th and June 30th. Appellant Neuman's August application does not come within the "change in the resident status of the child" good-cause exception.

See 281--IAC § 17.4(1). This is true not only because the application is past the June 30th deadline, but because Jeff never moved from his resident school district. While the Board has approved Jeff for open enrollment during the 1995-96 school year, we find no reason to disturb the August 25th ruling of the District Board denying Jeff's application for the 1994-95 school year.

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Abrienne Long

Abrienne's change of custody was not final until August, 1994.

Because of that, there was no way for Appellant Long to comply with the June 30th deadline for "good cause." The State Board has recently addressed this issue in the decision of In re Bryan Swift, 12 D.o.E. App. Dec. 24 (November 16, 1994). In that case, the State Board relied upon Iowa Code section 282.18(20) (1993) which states in part as follows:

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.

Id.

The facts in the Swift case are strikingly similar to the case at hand. In Swift as here, the change of custody dispute involved a tenth grader whose wishes to attend a particular high school were given great weight by the Court; in Swift, as in this case, the Court Decree was not rendered until August -barely a month before the beginning of school. The only distinction between the two cases is the fact that unlike Bryan Swift, who had never attended school in the district to which he open enrolled, Abrienne has attended all but a portion of last year in the Central Lyon Community School District where she seeks to go.

For the reasons described above, the present situation, like the Swift case, presents an appropriate occasion for the use of the Board's section 20 power. We therefore recommend that the State Board exercise its authority under section 20 and overturn the District Board's denial of Appellant Rickie Long's application for open enrollment from the George Community School District to the Central Lyon Community School District for his daughter, Abrienne.

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

III. Decision

For the foregoing reasons, the August 25, 1994, decision of the Board of Directors of the George Community School District, denying Appellant Patricia Neuman's untimely open enrollment request for her son, Jeff, to the Central Lyon Community School District for the 1994-95 school year is hereby recommended for

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affirmance. The decision of the Board of Directors of the George Community School District, denying Appellant Rickie Long's untimely open enrollment request for his daughter, Abrienne, to the Central

Lyon Community School District for the 1994-95 school year is hereby recommended for reversal. There are no costs of 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