

As he testified at the hearing, "if our trailer was parked across the road, we would reside in the Wapello School District." As it is, they reside in the Morning Sun School District.

Appellants' oldest daughter, Alexandria, was in first grade in January, 1993. Since they assumed they were in the Wapello School District, they transported her to school every day. Then in June, 1993, the Wonders received a letter from the Morning Sun School District advising them to fill out the open enrollment application if they wanted their daughter to attend school in Wapello.

Appellants' other two children were preschoolers at the time, but the second child, Aerial, was entering kindergarten during the 1994-95 school year. So, when Mr. Wonders filled out the open enrollment application for Alexandria who was entering second grade, he also filled out an application for Aerial who was entering kindergarten. Question number 11 of the open enrollment application asks: "Is the request made due to the parent or guardian changing district of residence and desiring that the pupil remain in the original district with no interruption in the education program?" Mr. Wonders answered "yes." Question number twelve asks: "Current grade of pupil (If the request is for a pupil not currently in school, indicate zero)." Mr. Wonders put a "K" in the space. The applications were filed July 23, 1993 and approved by the Morning Sun Board on August 16, 1993.

This appeal arises because when it was time for the youngest child, Aaron, to attend kindergarten, Mr. Wonders followed the same procedures. He filed for open enrollment on August 2, 1994 for the 1994-95 school year. However, there was one minor difference this time. In response to question number eleven, he answered "no" and in response to question number 12 asking for Aaron's current grade, he put "zero."¹ When this request was acted upon on August 24, 1994, the Board the minutes reflect the following:

The open enrollment request was then discussed. Mr. Wonders filed the request after the June 30 deadline, but asked the Board to approve it as his

¹In the previous year's open enrollment applications when the same questions were completed for Aerial, he answered that her current grade was "K" even though she was a preschooler. At the same time, however, he answered that the current grade for Alexandria who was currently in the first grade was second. He was consistent in both of the 1993 applications.

other two children are attending school at Wapello.

74

He stated that we approved the request for his daughter last year who was going into kindergarten, but the superintendent noted that the request of July 23, 1993, indicated both children were already attending classes at Wapello, which misled the Board into thinking they had no choice but to approve it.

The Board felt they should not approve this request because they would be setting a precedent, and because they denied an unrelated request last year for late filing. Schmidtberger moved to deny the request as had been past practice with late filing, Gibson seconded it and it passed, unanimously.

When asked by the hearing panel why he waited until after June 30 to apply for his son Aaron's open enrollment to Wapello, Mr. Wonders replied that he didn't know there were any deadlines. He stated that it was never his intention to mislead the Board in his 1993 application, and we believe him.

II. Conclusions of Law

The normal open enrollment deadline is extended from October 30 to June 30 for parents of children going into kindergarten. Iowa Code § 282.18(2). This was a decision made by the General Assembly in drafting the law. We have no direct indication as to why the deadline was extended; we can only imagine that the legislature recognized that in July through October of the year before a little one would be starting school, the parent of that four-year-old might not be thinking about kindergarten let alone in which school district they might want to enroll the child. "Kindergarten round up" is usually in April or early May. This adds to the logic of extending the deadline from October to the end of June.

Another provision of the open enrollment law which impacts this case is a subsection dealing with families who move and want to return to their former district of residence for school.

"If a request to transfer is due to a change in family residence, ... and the child who is the subject of the request is not currently using any provision of open enrollment, the parent or guardian of the child shall have the option to have the child remain in the child's original district of residence

under open enrollment with no interruption in the child's educational program."

Iowa Code § 282.18(10) (1993).

75

This quoted provision, while it may have applied to Appellant's 1993 open enrollment applications, does not exactly fit Aaron's situation. The parents filed late in Aaron's case because they simply did not understand the law. The District testified that it publishes its open enrollment deadlines in the local newspaper, but Appellant testified he did not see such a notice.

Unfortunately, "ignorance of the law is no excuse." 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 application to the wrong place, In re Casee Burgason, 7 D.o.E. App. Dec. 367 (1990). The law places the burden of knowing their rights on those who would exercise them, in this case on parents and guardians.

The case before us is a difficult one. On the one hand, the District Board recognized the importance of honoring its precedent and chose not to allow Appellant's late application. On the other hand, Mr. Wonders followed what he thought was "precedent for him" and waited until August to apply for the following school year. If he had only filed for Aaron when he filed for his two older daughters, this case would not be here.² Knowing that Aaron will only be spending one year at Morning Sun and that he would be separated from his older siblings, the District Board could have granted the late request and distinguished it from the prior unrelated "late filing" that had been denied by the Board in 1993.

Unfortunately, the Board felt that it had been misled by Mr. Wonders when it granted the late request of his daughter Aerial in August of 1993. Although we don't believe Mr. Wonders intentionally misled the Board, we can understand how the Board may have felt.

The State Board of Education does not deem itself a "super school board." In re Carl Raper, 7 D.o.E. App. Dec. 352, 355. The State Board will not overturn a local board decision unless it was made arbitrarily or capriciously without basis in fact, or it constitutes an abuse of discretion. In re Jerry Eaton, et al., 7 D.o.E. App. Dec. 137, 141 (1989). Consequently, we must recommend affirmance of the District Board's decision.

²Aaron has been approved for open enrollment for the 1995-96 school year.

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

76

**III.
Decision**

For the reasons state above, the decision of the Board of Directors of Morning Sun Community School District made on August 24, 1993, denying the open enrollment application for Aaron Wonders, is hereby recommended for affirmance. There are no costs to be assigned pursuant to Iowa Code § 290.4 (1993).

Date

Ann Marie Brick, J.D.
Administrative Law Judge

It is so ordered.

Date

Ron McGauvran, President
State Board of Education