

**Iowa State Board  
of Education**

(Cite as 12 D.o.E. App. Dec. 69)

In re Shandra Walker  
James and Darlene Walker,  
Appellants,  
v.  
Albert City-Truesdale  
Community School District,  
Appellee.

DECISION  
[Admin. Doc. #3531]

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The above-captioned matter was heard telephonically on November 15, 1994, before a hearing panel comprising Dennis Dykstra, consultant, Bureau of Special Education; June Harris, consultant, Bureau of Planning, Research and Evaluation; and Ann Marie Brick, legal consultant and designated administrative law judge, presiding. Appellants were "present" by telephone and were represented by Mr. Ted Brown, Esquire. Appellee, Albert City-Truesdale Community School District [hereinafter "the District"] was also present on the telephone in the person of Superintendent, Dr. William Hollinger, *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 at Iowa Code §282.18(5) and Chapter 290. Appellants seek reversal of a decision of the board of directors [hereinafter "the Board"] of the District made on July 18, 1994, denying the Appellant's late request for open enrollment for their daughter, Shandra Walker to Storm Lake Community School District beginning in 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.

Mr. and Mrs. Walker have lived in Truesdale for the past seven years. They have two daughters. Shandra, the subject of this appeal, is a fifth grader at the Albert City School. Her older sister Sarah is in the eighth grade and was approved by the Board to open enroll to Storm Lake Community School District beginning in September of the 1994-95 school year. Appellants filed late applications to open enroll both girls in the Storm Lake Community School District but only Sarah's application was approved. The Board's action came on July 18, 1994 when they granted Sarah's application to open enroll for "good cause"; and finding no good cause for Shandra, her application was denied.<sup>1</sup> The Walkers are

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<sup>1</sup>Shandra has been approved for open enrollment to Storm Lake for the 1995-96 school year.

appealing the July 18, 1994 decision of the Board because they believe that the children should not be separated; they should be attending the same school in the same school district.

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Mrs. Walker has been diagnosed with cancer and was unable to attend the hearing. Her illness has added to the difficulty of having two children in two different school districts. The application was filed late because the Walkers had previously talked with the President of the Board about Sarah's ongoing difficulties with her peers at school. The President of the Board had encouraged the Walkers not to open enroll in order to give things a chance to improve at Albert City. It was his opinion that the problems the Walkers saw "would just go away". However, Mr. Walker testified that things deteriorated with Sarah to the point that the Walkers had to get help. Mr. Walker was able to get limited help for Sarah without cost to the family so it was not on Sarah's school records.

In fact, the District was unaware that Sarah was receiving psychological counseling. The Board knew only about supposed peer relation problems. After Sarah's psychological evaluation was completed on June 30, 1994, applications for open enrollment to Storm Lake Community School District were filed for both Sarah and Shandra.

At the July Board meeting, Sarah's medical and psychological problems were brought to the Board's attention. The Board took the matter very seriously and recommended approval for Sarah to attend Storm Lake if that would be in her best interest. However, there was no "good cause" for Shandra's request to be granted, so it was denied. Superintendent Hollinger stated that the Board's concern was for the best interests of Sarah and they felt that granting the request was based on a medical need. He analogized the situation to "looking for an alternative program for Sarah based on the psychological evaluation." Since Shandra did not possess the same medical reasons, the denial of her application was based on lack of timeliness. We believe the Board had the right to do this.<sup>2</sup>

## II.

### Conclusions of Law

Appellants' position is that because it granted Sarah's late application for open enrollment for "good cause", the Board should also grant Shandra's late application in order to avoid separating the two siblings. Mr. Brown, attorney for Appellants, argued that the legislative history of the open enrollment statute demonstrates an intent to keep families together.

As the parties are all aware, Iowa's Open Enrollment Law provides that,

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<sup>2</sup>Although Sarah's application was granted on the basis of her psychological evaluation, the testimony from the superintendent indicated that he thought the decision to open enroll Sarah was precipitated by a dispute with her track coach. The superintendent felt that the psychological evaluation was suggested by the Appellants' attorney. We are not deciding Sarah's case; so those facts are not relevant here.

in general, applications for enrollment out of the school district must be filed between July 1st and October 30th of the year preceding the school year in which open enrollment will take place. Iowa Code § 282.18(2) (1993). We have previously stated that use of the term "application" in the statute is a misnomer because it implies that the parent seeks board approval of the open enrollment request. In re Amanda and Emily Lynam, 9 D.o.E. App. Dec. 118, 119. If the form is timely filed, the resident district board has no discretion to deny the open enrollment, unless the district is under voluntary or court-ordered desegregation which is not the situation here. Nor is it a situation where the application has been timely filed. However, this case is problematic because although the Board approved Sarah, Appellant's reasons for late filing for Shandra do not meet the definition of "good cause" permitting or requiring approval even though the deadline was missed.

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Although Iowa Code § 282.18(20) allows the State Board to ignore the filing deadlines in the Open Enrollment Law where that action is necessary "to achieve a just and equitable result that is in the best interest of the affected child or children", that action has been deemed an extraordinary power to be used sparingly. "[W]henver a child's unique situation cries out for State Board intervention," this discretionary power is ripe to be exercised. In re Cameron Kroemer, 9 D.o.E. App. Dec. 302, 308 (1992). It is for situations that the General Assembly was unable to envision, not unwilling to include. Id.

In the scores of appeals brought to the State Board since the enactment of the Open Enrollment Law, very few have been reversed for "good cause" under the Board's discretionary power. The State Board has refused to reverse a late application because the parent mailed the application to the wrong place, In re Casee Burgason, 7 D.o.E. App. Dec. 367 (1990); 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 even where a child experienced difficulty with peers and was recommended for a special education evaluation, In re Terry and Toni Gilkison, 10 D.o.E. App. Dec. 205 (1993).

But more importantly, the decision in this case is controlled by the precedent established in a similar factual situation. In re Kandi Becker, 10 D.o.E. App. Dec. 285 (1993). In that case, a requirement of "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 that case, as in this one, the circumstances make the decision difficult but do not compel the State Board to enlarge the "good cause" exception.

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

### III. Decision

For the foregoing reasons state above, the decision of the Albert

City-Truesdale Community School District's Board of Directors, made on July 18, 1994, denying Appellants' open enrollment request for their daughter, Shandra to attend Storm Lake Community School District, is hereby recommended for affirmance. There are no costs of this appeal to be assigned pursuant to Iowa Code § 290.4.

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DATE

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Ann Marie Brick, J.D.  
Administrative Law Judge

It is so ordered.

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DATE

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Ron McGauvran, President  
State Board of Education