

**Iowa State Board
of Education**

(Cite as 12 D.o.E. App. Dec. 24)

In re Bryan Swift.

Joseph Swift,
Appellant,

:
:

v.

DECISION

West Liberty Community
School District,
Appellee.

:
:

[Admin. Doc. # 3527]

The above-captioned matter was heard telephonically on October 12, 1994, before a hearing panel comprising Dick Boyer, administrative consultant, Bureau of School Administration and Accreditation; Lyle Wilharm, administrative consultant, Bureau of Food and Nutrition; and Ann Marie Brick, legal consultant and designated administrative law judge, presiding. Appellant was "present" by telephone, unrepresented by counsel. Appellee, West Liberty Community School District [hereinafter "the District"] was "present" on the telephone, in the person of Superintendent Lee Hoover, 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(5) and 290.1. Appellant seeks reversal of the 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 his son, Bryan, to the Wilton 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 appeal before them.

Bryan Swift is a 15 year-old sophomore attending high school in the Wilton Community School District. His parents divorced when he was three years old and the court placed Bryan's physical custody with his mother. Eventually, both his mother and his father remarried. Bryan's father has been living with his second wife and her 17 year-old son, Jesse, in Wilton, Iowa. Bryan has

been living with his mother and her second husband, a step-sister and a half-sister in Atalissa, Iowa. Atalissa is in the West Liberty Community School District.

During the last three to four years, Bryan has expressed a strong desire to live with his father in Wilton. He had become good friends with his step-brother, Jesse, who is presently a senior at Wilton High School. At the same time, he had begun to experience some tension in his mother's home with his step-sister and half-sister. All of this culminated in an action filed by Joseph Swift, who petitioned the court to modify the Decree of Dissolution to award him Bryan's custody. Although, it's not clear when the modification petition was filed, it had been pending for some time before the court rendered its decision. That decision was filed on July 13, 1994, and placed Bryan's physical custody with his father, Joseph Swift. In its decision, the court indicated that it had given a lot of weight to Bryan's wishes since he was a mature 15 year-old.

Apparently, the change in custody was strongly opposed by Bryan's mother. As a result, the parties engaged Dr. James Yeltatzie, a physician and psychiatrist, to evaluate Bryan "to determine whether or not Bryan's request for change of custody was his own, was not the result of parental pressure, and would be in Bryan's best interest." Dr. Yeltatzie's findings were the basis of the court's decision and were incorporated in a Decree which stated in part:

[Dr. Yeltatzie] found that if the application to change custody were denied, Bryan would most likely suffer some very adverse effects including depression, worsening of academic performance, worsening social isolation, and increasing oppositional/angry behavior towards his mother and step-father. Bryan wants a good relationship with, and liberal visitation with his mother and her family, and Respondent would support such liberal visitation. Also Bryan's desire for change of custody is his wish to attend the Wilton rather than the West Liberty High School. The psychiatrist believes a change of custody would be in Bryan's best interest.

The change of custody became effective on August 1, 1994. This decision was intended to end years of uncertainty about where Bryan could live and attend school. Unfortunately, that was not the case.

During the summer of 1994 while the custody action was pending, Bryan's father moved to a larger home on the border of the Wilton-West Liberty school districts. As he testified during

the hearing, "The Wilton bus stops nearby. It never occurred to me that we had inadvertantly moved out of the Wilton School District."¹ Appellant's excitement over the outcome of the court's decision was dampened by this realization, but he immediately filed for open enrollment from West Liberty to Wilton for the 1994-95 school year. His request was denied by the Board on July 18, 1994, because the request "did not follow the proper time lines set by the Iowa Code." This appeal followed the next day.

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

¹Since Jesse was going to be a Senior at Wilton during the 1994-95 school year, he was able to remain as a student in Wilton in spite of the move to the West Liberty School District.

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 30. Because the Court's Modification of Custody Decree was not rendered until July 13, 1994, 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" on several statutory grounds:

- a. A change in the family residence due to the family's moving from the district of residence any time from October 31 through June 30 of the school year preceding the school year for which open enrollment is requested.
- ...
- c. A change in the marital status of the pupil's parents.
- d. A guardianship proceeding.
- ...
- i. A similar set of circumstances related to the resident status of the child consistent with the provisions of good cause.

281--Iowa Administrative Code § 17.4(1).

However, 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 schools 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 two 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 only other 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 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 West Liberty School District to Wilton Community School District.

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

III. Decision

For the foregoing reasons, the July 18, 1994, decision of the Board of Directors of the West Liberty Community School District, denying Appellants' untimely open enrollment request for his son, Bryan, to the Wilton Community School District for the 1994-95 school year is hereby recommended for reversal. Costs of this appeal, if any, are assigned to Appellee. Iowa Code § 290.4.

Date

Ann Marie Brick, J.D.
Administrative Law Judge

It is so ordered.

Date

Ron McGauvran, President
State Board of Education