IOWA DEPARTMENT OF EDUCATION 29 D.o.E. App. Dec. 377

In re: Open Enrollment of M.W. and L.W.,))
Michelle Phillips Wegner,) Admin Doc. 5128
Appellant,	{
ν,	
DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT,))
Appellee.) DECISION

Appellant M.W. filed for open enrollment for A.W., M.W., and L.W. on August 17, 2020. The Des Moines Independent Community School District ("District") granted the application for A.W., who was entering kindergarten (Exhibit C). The District approved A.W.'s application, which was timely filed for an entering kindergarten student (September 1; see Iowa Code § 282.18(2)(b) (2020)). The District denied the applications for M.W. and L.W. because they were not filed by March 1 of the preceding year (Exhibits 1, D, and E). The District's school board affirmed the decision on September 15 (Exhibit 4), and Appellant timely appealed. Iowa Code § 290.1. We have jurisdiction of the parties. Id.

Appellant asserts that the District's decision to offer completely virtual education in defiance of the provisions of Senate File 2310 and Governor Reynolds's disaster proclamations constitutes "good cause" for a late-filed open enrollment application. In effect, Appellant argues that any district that is out of compliance with state law loses its ability to deny late-filed open enrollment requests. The nature of Appellant's claim is intertwined with our jurisdiction to consider this claim. The State Board has only the jurisdiction conferred on it by the legislature. Prior to July 1, 2003, any open enrollment denial was appealable under section 290.1. In 2003, the legislature limited the State Board's jurisdiction to open enrollment denials "involving repeated acts of harassment of the student or serious health condition of the student that the resident district cannot adequately address." 2003 Iowa Acts, House File 2515 (amending Iowa Code sections 282.18(5) and 290.1). The applications do not list either of these grounds, and Appellant's statement to the District's school board contains a general statement from the American Academy of Pediatrics regarding the relative risks and rewards of online instruction (Exhibits 1 and B) but no medical evidence tied specifically to either of her children.

Appellant points to language in section 282.18, which provides that the open enrollment statute is to be liberally construed. That rule of construction applies only in cases of ambiguity. "We cannot, under the guise of construction, enlarge or otherwise change the terms of a statute as the legislature adopted it." *Marcus v. Young*, 585 N.W.2d 285, 289 (Iowa 1995) (citations omitted). Since the appeals before us do not fit within the plain language of either of the provisions of

section 282.18(5), no amount of liberal construction will repair that jurisdictional defect. The State Board lacks jurisdiction under section 290,1 to hear them.

While the District's actions in defiance of the Iowa Department of Education and Governor Reynolds ought to carry meaningful consequences,² this is not one of them. Any recourse the family has under section 282.18 is in state district court. The State Board is powerless to grant the requested relief.³ The matter is

DISMISSED.

Thomas Mayes

Administrative Law Ladge

12/31/

Brooke Miller Axiotis, President

State Board of Education

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¹ The District argued that Appellant's claims were moot. Given our disposition of this matter on jurisdictional grounds, we need not address mootness.

One type of "good cause" for late filing under section 282.18(4) is "a change in the status of a child's resident district." While this matter is not within the State Board's jurisdiction in the present action, we note that this does not appear to be the case. The District is — for the time being — accredited.

³ The Department's administrative law judge reached a similar conclusion in *In re Open Enrollment of N.H.*, 29 D.o.E. App. Dec. 1 (2018). This decision, however, was not presented to the State Board for its approval. *Cf.* Iowa Code § 256.7(6).