

IOWA DEPARTMENT
OF EDUCATION

CITE AS 29 D.o.E. App. Dec. 379 (2021)

<i>In re Open Enrollment of F.N. & G.N.,</i>	:	
R.N. & K.N.,	:	DECISION
Appellant,	:	
vs.	:	
CAM Community School District,	:	[Admin. Doc. #5121]
Appellee.	:	

R.N. and K.N. (“Appellants”), who are residents of CAM Community School District (“District”), seek to have their children F.N. and G.N. attend the Iowa Connections Academy, a virtual school and an attendance center of the District. The District’s board of directors (“school board”) denied their request on September 14, 2020, and Appellants filed their affidavit of appeal on the next day. The Iowa Department of Education, Thomas A. Mayes, designated administrative law judge presiding, heard this appeal by video conference on October 26, 2020. Appellants were present and were represented by attorney Frederick Sinkevich. The District was present via Superintendent Paul Croghan and board president Gary Dinkla, and was represented by attorneys Katherine Beenken and Emily Kolbe.

After considering the testimony of the witnesses, the exhibits offered, and the arguments of counsel, the school board’s decision is AFFIRMED.

Findings of Fact

One of the two children has a diagnosis of asthma, which places her at risk due to COVID-19 (Exhibit F).¹ Beginning in June 2020, appellants communicated these concerns to the District. In August 2020, Appellants first indicated their desire to enroll the children in the Iowa Connections Academy, believing it to be a “better fit” for their children. The Iowa Connections Academy is a program offered by the District. An entirely online school, it is considered one of the District’s buildings, although it is

¹ This Exhibit was admitted solely for the purpose of establishing the child’s medical condition.

operated by a private vendor. It accepts open enrollment applications from around the state. On August 10, 2020, Appellants filed open enrollment applications for their children, listing "health" as a reason for filing after the March 1 deadline (Exhibit C).

On August 18, consultants of the Iowa Department of Education advised the District that it was a local decision about whether to treat requests to attend the Iowa Connections Academy as open enrollment or as a within-district transfer (Exhibit 6). The Department further advised that, if open enrollment were used, the statutory deadlines and good cause would apply. The Department cautioned about allowing CAM students to transfer to the Iowa Connections Academy without using the open enrollment process.

On September 14, 2020, the school board denied Appellants' open enrollment requests. After the denial, Appellants addressed the school board during the period of public comment (Exhibit 2). Director Dinkla testified that Appellants filed these appeals on September 15 (Exhibit 4).

The District provides remote learning for children with COVID-19 risk factors. That remote learning is taught by Iowa licensed teachers. Although Appellants assert that the Iowa Connections Academy would provide higher quality learning experience, there is no evidence that the remote learning directly offered by the District fails to meet the requirements which the law imposes. Iowa Connections Academy has the benefit of years of experience; however, the District was quickly able to establish a compliant learning environment taught by appropriately licensed teachers. Although Appellants offered testimony about the respective quality of the District's remote learning and the Iowa Connections Academy, Appellants offered no evidence that enrollment in the Iowa Connection Academy is necessary to address the child's asthma.

The District and school board have a policy on attendance center assignments (Exhibit 5). In pertinent part, it reads: "The board will have complete discretion to determine the boundaries for each attendance center, to assign students to the attendance centers, and to assign students to the classrooms within the attendance center."

Conclusions of Law

This appeal is timely filed, and the undersigned administrative law judge and State Board have jurisdiction of the parties and the subject matter. Iowa Code § 290.1 (2020).

Appellants carry the burden of proving their entitlement to relief. *In D.L.*, 7 D.o.E. App Dec. 286, 288 (1990). "This is a heavy burden, particularly when the challenged decision or action is within a board's power to make...." *Id.* The Board will review the decision on alternative grounds - denial of open enrollment and denial of a student transfer. The degree of review is based on the grounds.

Senate File 2310 contains the following key provisions. Regarding open enrollment, section 12 provides, in relevant part:

Notwithstanding section 282.18, subsection 2, paragraph "a", for the school year commencing July 1, 2020, a parent or guardian shall have until July 15, 2020, to notify to the district of residence and the receiving district, on forms prescribed by the department of education, that the parent or guardian intends to enroll the parent's or guardian's child in an online public school in another school district, if the child, another resident of the child's residence, or a regular caretaker of the child has a significant health condition that increases the risk of COVID-19.

Section 18, subsection 4, provides the following pertinent provision:

If a parent or guardian of a student enrolled in a school district or accredited nonpublic school notifies the school district or accredited nonpublic school in writing that the student, another resident of the student's residence, or a regular caretaker of the student has a significant health condition that increases the risk of COVID-19, the school district or accredited nonpublic school shall make reasonable accommodations for the student, on a case-by-case basis, to attend school through remote learning.

Open Enrollment. If this action is viewed as a denial of open enrollment based "serious health condition," the State Board has the following command: "The state board shall exercise broad discretion to achieve just and equitable results that are in the best interest of the affected child or children." Iowa Code § 282.18(5). While broad, this scope of review does not provide the State Board the power or the obligation to substitute its judgment for a local board, or to grant relief when a parent failed to meet its burden of proof. The State Board must be "just," which means following the applicable law.

The Appellants did not timely file under either potential deadline: March 1 or July 15.² To establish entitlement for late-filed open enrollment based on a "serious health condition of the student that the resident district *cannot adequately address*," *see id.* (emphasis added), Appellants must show the following six elements.

1. The serious health condition of the child is one that has been diagnosed as such by a licensed physician, osteopathic physician, doctor of chiropractic, licensed

² To the extent the Appellants assert they were not adequately advised of the July 15 deadline, we note that the parties are deemed to know the law. *See, e.g., Matter of Duhme's Estate*, 267 N.W.2d 688, 694 (Iowa 1978).

physician assistant, or advanced registered nurse practitioner, and this diagnosis has been provided to the school district.

2. The child's serious health condition³ is not of a short-term or temporary nature.
3. The district has been provided with the specifics of the child's health needs caused by the serious health condition. From this, the district knows or should know what specific steps its staff can take to meet the health needs of the child.
4. School officials, upon notification of the serious health condition and the steps it could take to meet the child's needs, must have failed to implement the steps or, despite the district's best efforts, its implementation of the steps was unsuccessful.
5. A reasonable person could not have known before March 1⁴ that the district could not or would not adequately address the child's health needs.
6. It can be reasonably anticipated that a change in the child's school district will improve the situation.

See, e.g., In re A.C., 24 D.o.E. App. Dec. 5 (2006). The parties appear to agree that Appellants have proven elements one and two. The District disputes the remaining elements. After considering the evidence of record, we conclude that Appellants have not -- and cannot -- meet elements four and six.

The District implemented a program of remote learning, pursuant to Senate File 2310's section 18, that would allow the child with asthma to have completely remote instruction. Between the District's program of remote learning and the Iowa Connections Academy, both are equally able to reduce the child's exposure to other children and adults. Attendance at the Iowa Connections Academy is no better than the District's program of primarily remote learning for addressing the child's risk factors for COVID-19. For that reason, Appellants failed to prove a change is necessary to *improve* the child's situation, "situation" here referring to the child's serious health condition - not the parents' perception of the overall quality of their child's education. Also for that reason, Appellants failed to prove the District failed to take steps to address the child's health-related needs. The District's compliance with Senate File 2310's section 18 satisfied its obligations related to element 4.

Appellants, having failed to prove attendance at the Iowa Connections Academy is necessary because the District cannot adequately address their child's asthma, are not entitled to relief under an "open enrollment" theory.

³ Senate File 2310 expands the scope to household members and caretakers. We express no opinion on whether a late-filed open enrollment request for a sibling's serious health condition would qualify, absent the language in Senate File 2310.

⁴ We will assume that Senate File 2310 alters this date. Even if that is the case, that does change the outcome.

Attendance Center Assignment. Iowa Code section 279.11(1), provides.

The board of directors shall determine the number of schools to be taught, divide the corporation into such wards or other divisions for school purposes as may be proper, *determine the particular school which each child shall attend*, and designate the period each school shall be held beyond the time required by law.

(Emphasis added.) Actions under this section are within the sound discretion of the school board and District. For that reason, our review on appeal is limited to whether the District and school board abused the discretion conferred upon it in adopting and applying the policy on attendance center assignments. *See, e.g., Sioux City Cmty. Sch. Dist. v. Iowa Dep't of Educ.*, 659 N.W.2d 564, 569 (Iowa 2003).

In applying abuse of discretion standards, we look only to whether a reasonable person could have found sufficient evidence to come to the same conclusion as reached by the school district. In so doing, we will find a decision was unreasonable if it was not based upon substantial evidence or was based upon an erroneous application of the law.

Id. (citation omitted). We must not “substitute our judgment for that of the school district.” *Id.* Since at least 1978, the State Board has struggled with parent concerns about which schools their children attend within their districts. *See, e.g., Chariton Cmty. Sch. Dist.*, 1 D.P.I. App. Dec. 197, 199 (1978). We will not engage in “mere second guessing” when the school board and District offers a “reasonable justification for” their actions. *Id.* Appellee provided evidence about setting limits on enrollment of its resident students to the Iowa Connections Academy, including the great disruption that would occur if it were not able to set limits, including crucial decisions about staffing. While we may make a different decision under the same facts, that is not our prerogative: we are not elected members of the District’s board of directors. Understanding our function being to review the school board’s decision for an abuse of discretion, we have done so and find none.

Appellants, having failed to prove the District and its board abused the considerable discretion afforded to it under section 279.11, are not entitled to relief under a school assignment theory.

Additional Arguments. Appellants present two additional arguments. First, they assert they were misled by the District about whether they could open enroll their children to the Iowa Connections Academy. Having reviewed the record, including Exhibits 1 and 2, we cannot find the District clearly stated it would allow the children to enroll in the Iowa Connections Academy. We also note that any conversation about such enrollment

was after the July 15 deadline. This is not a case where the Appellants, relying to their detriment on information from the District, missed a deadline.

Second, Appellants assert they were not allowed to present their argument before the school board voted to deny their application. We take this assertion to be, in essence, an alleged denial of due process. Appellants informed the school board of the basis of their request during the period of public comment. The board heard and considered this information, and it could have reconsidered its prior position. It did not. While a better practice may have been to adjust the agenda, we cannot say the school board denied the Appellants an opportunity to be heard. *See, e.g., Mathews v. Eldridge*, 424 U.S. 319 (1976). Moreover, we cannot say that a different procedure would have compelled a different outcome.

Conclusion

We have considered all issues presented and AFFIRM the September 14, 2020, decision denying Appellants' children the enrollment requested by the Appellants.

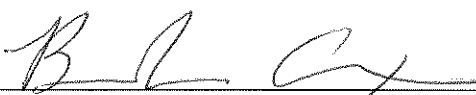
No costs.

January 8, 2021

/s/ Electronically Signed
Thomas A. Mayes
Administrative Law Judge

So ORDERED

1/28/2021
DATE



Brooke Miller Axiotis, President
State Board of Education