Iowa State Board of Education
(Cite as 12 D.o.E. App. Dec. 5)

In re Katherine Cram.

Myron & Mariann Cram, Appellants,

v.

Corwith-Wesley Community School District, Appellee.

DECISION

[Admin. Doc. #3538]

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. Appellants were "present" through Myron and Mariann Cram by telephone, unrepresented by counsel. Appellee, Corwith-Wesley Community School District [hereinafter "the District"] was also present on the telephone, in the person of Superintendent Don West, 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 sections 282.18 and 290. Appellants seek reversal of the decision of the board of directors [hereinafter "the Board"] of the District made on August 17, 1994, denying the Appellants' late request for their daughter, Katherine Cram, to open enroll into the Algona Community School District.

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.

Appellants' daughter, Katherine, is a tenth grader who resides with her family in the Corwith-Wesley Community School District. She attended ninth grade in Corwith-Wesley during the 1993-94 school year and, as a freshman, she participated in the music program. At the conclusion of her freshman year, she was recommended by her Corwith-Wesley band instructor to tour Europe with a group of Iowa high school music students. The costs of the trip were paid for by her parents.

Ms. Cram testified that while on the tour, Katherine was with a group of children from all across the State and enjoyed being with others who had similar interests. Katherine found that her rapport with the group was very stimulating academically and socially. She believed that there were advantages in attending a school with a larger curriculum and stated upon her return from Europe, that she would like to enroll in the Algona School District. Thereafter, Appellants started the application process to enroll her in Algona for the 1994-95 school year.

The open enrollment application was received by the Superintendent on August 8, 1994. The Board considered the application at its regular meeting on August 17, 1994, and voted to deny the request as late without good cause. The Superintendent recommended approval because he felt the parents "should have the choice in this matter."[1]

It is not the Crams' contention that statutory "good cause" exists for the approval of Katherine's open enrollment application. The Crams' major contention on appeal is that the District's denial of their late application was "arbitrary and capricious" because the Board violated a precedent set by an approval of a late application in April, 1993. In the (Ben DeWaard) case, there were no unusual circumstances amounting to good cause, but the student was allowed to open enroll to Algona as a freshman.[2] Ms. Cram testified that she understood that the open enrollment statute supports parental choice and should be given the broadest possible interpretation. She also testified repeatedly that if the District denied their application, it would be arbitrary and capricious since the Board had approved a late application previously without giving specific reasons for its action.

This leaves us then with the question of whether the District's denial of the Crams' application, after approving the DeWaard's application is evidence of arbitrary and capricious action sufficient to justify reversal.

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[1]The Corwith-Wesley Board has already approved Katherine's open enrollment request for 1995-96. Ms. Cram understands that if their appeal is denied by the State Board, they will be charged tuition by Algona.

[2]Mrs. DeWaard testified at the hearing on behalf of the Crams. She stated that her son had been allowed to open enroll to Algona, even though his application was filed in April without good cause. Neither the Superintendent nor the mother could explain the Board's action, but Superintendent West testified that there have been no other occasions when the Board had approved a late application.

II.
Conclusions of Law

Appellants' position is that by granting the DeWaard's late application for open enrollment in 1993, the Board has "opened the door" for the approval of subsequent late applications. We recently addressed this argument in In re Ryan and Jason King, 11 D.o.E. App. Dec. 343. In that case, the superintendent wanted to grant a late application for good cause, but was reluctant to do so because he feared all future late applications would have to be approved. The State Board disagreed stating, "[T]his is not true, at least so long as the Board's motion approving a late application, as reflected by the secretary's minutes, show the facts that justify the approval despite the deadline." Id. at 349.

Therefore, it is clear that only if a future late application involves the same factual situation would the School Board be obliged to grant it based on its precedent. It is simply not true that approving a late application once means *all* future late applications must be approved as well.

The problem in the present case is that there is nothing in the record to show what facts prompted the District to grant Ben DeWaard's late application on April 13, 1993. The minutes of that Board meeting were provided by Appellants to the hearing panel. The motion contained in the minutes approving Ben DeWaard's application simply stated: "Motion by Nygaard, second by Beenken, allowed the open enrollment request of the Dwayne DeWaards (Ben) to the Algona public school for 1993-94 even though the request was late. All ayes. ..." Unfortunately, neither Ms. DeWaard nor Superintendent West could enlighten the hearing panel as to the reasons.

A sending district may by policy waive the timeline for all applications, or may by policy waive it for certain specified situations, or may determine to make exceptions only on a case-by-case basis. In re Anthony Schultz, 9 D.o.E. App. Dec. 381 (1992). There is nothing in the record to show that this "sending district" has adopted a policy by which it will waive timelines for all applications, or some specified situations. Indeed, there is no evidence that a late application for open enrollment has ever been approved by this District with the exception of the Ben DeWaard case. In granting Ben DeWaard's late application for open enrollment, it was incumbent upon the Corwith-Wesley Board and its secretary to word the motion approving that request with care so that the precedent was stated narrowly and in clear language. That would provide future school board members, the administration, and the public with notice as

to what circumstances would justify the departure from the normal practice of denying late applications. See In re Ryan and Jason King, 11 D.o.E. App. Dec. 343, 349.

Since we don't know if the present appeal involves the same factual situation as the DeWaard case, we cannot say that the School Board is bound by its prior precedent. In the absence of any other approvals of late applications, the District's actions fall short of establishing a policy or precedent. As a result, there are insufficient grounds to justify reversing the District Board; thus, the recommendation is to affirm the decision.

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

III.
Decision

For the foregoing reasons, the August 17, 1994, decision of the Board of Directors of the Corwith-Wesley Community School District, denying Appellants' untimely open enrollment request for their daughter, Katherine, to the Algona Schools for the 1994-95 school year is hereby recommended for affirmance. Costs of this appeal, if any, are assigned to Appellants. Iowa Code § 290.4.

November 7, 1994
Date

Ann Marie Brick
Ann Marie Brick, J.D.
Administrative Law Judge

It is so ordered.

Nov. 16, 1994
Date

Ron McGauvran
Ron McGauvran, President
State Board of Education