

IOWA DEPARTMENT
OF EDUCATION

29 D.o.E. App. Dec. 387

<i>In re Open Enrollment of S.B., S.B. & S.B.,</i>	:	
K.B.,	:	
Appellant,	:	DECISION
vs.	:	
CAM Community School District,	:	[Admin. Doc. #5123]
Appellee.	:	

K.B. and T.B. (“Appellants”), who are residents of CAM Community School District (“District”), seek to have their children, identified by their initials in the caption, 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 that. The Iowa Department of Education, Thomas A. Mayes, designated administrative law judge presiding, heard this appeal by video conference on November 25, 2020. Appellants were present and were represented by attorney Bonnie Heggen. The District was present via Superintendent Paul Croghan and board president Gary Dinkla, and was represented by attorneys Katherine Beenken and Emily Kolbe. Superintendent Croghan testified.

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

Findings of Fact

One of the members of the household has an underlying health condition that places the individual at risk for COVID-19 (Exhibit 1-16 through 1-18, Exhibit 4). On August 13, 2020, Appellants filed open enrollment applications to the Iowa Connections Academy for their children, indicating COVID as a reason but not indicating a serious health condition (Exhibit 1). 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 operated by a private vendor. It accepts open enrollment applications from around the state.

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 10, 2020, Appellants e-mailed the members of the school board, indicating their rationale for selecting the Iowa Connections Academy (Exhibit 2).

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 3).

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, even though there are implementation dips associated with ramping up an entirely new online option. It was apparent from Appellants' cross-examination of Superintendent Croghan that they viewed the education provided by the District's program of remote learning to be inferior to that provided by the Iowa Connections Academy, and documents suggested Appellants felt their children were being used as "guinea pigs" in the District's scale-up of primarily remote learning (Exhibit 2), Appellants offered no evidence that enrollment in the Iowa Connection Academy is necessary to address the health condition in the household.

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. 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

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

2. The child's serious health condition¹ 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 1² 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 children 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 children'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 household member's risk factors for COVID-19. For that reason, Appellants failed to prove a change is necessary to *improve* the household member's situation, "situation" here referring to the household member's serious health condition - not the parents' perception of the overall quality of their children's education. While the Appellants are unhappy that the District's "online learning continues to evolve" (Exhibit 3), it meets the legitimate concerns the Appellants have for their household member. Also for that reason, Appellants failed to prove the District failed to take steps to address the household member's health-related needs. The District's compliance with Senate File 2310's section 18 satisfied its obligations related to element 4.

¹ 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.

² We will assume that Senate File 2310 alters this date. Even if that is the case, that does change the outcome.

Appellants, having failed to prove attendance at the Iowa Connections Academy is necessary to protect the health of their household member, are not entitled to relief under an “open enrollment” theory.

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 relying on a caution received from content area experts at the Iowa Department of Education (Exhibit 6). 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 argue that that families were provided notice about the District’s online information in August 2020, well after the extended July 15, 2020, open enrollment deadline. This cannot form the basis of relief. First, Senate File 2310, which established the extended deadline, also established a requirement for each

district to provide remote learning when a member of a student's household has increased risk from COVID-19. Prior to July 15, 2020, the law provided notice that districts were obligated to provide remote learning in all situations, not just in situations of open enrollment. Second, if families were concerned that they did not hear anything about the District's plans prior to July 15, that would counsel in favor of applying by the July 15 extended deadline.

Second, Appellants forcefully assert the school board and the State Board should grant some latitude in defining "good cause" because of the COVID-19 pandemic. The State Board has only such jurisdiction that is granted by the Iowa Code, and the Iowa Code clearly describes what constitutes good cause for late-filed open enrollment requests. Moreover, the legislature acted in the face of COVID-19 by passing Senate File 2310, which extended the timeline for filing for open enrollment due to COVID-19-related reasons. The legislature granted some relief to families such as the Appellants. The State Board is powerless to grant more.

Finally, Appellants' affidavit of appeal lists "harassment" of the Appellants by the District administration as a purported basis of relief. Generously assuming this is a grounds for relief under section 282.18(5) ("harassment of the student"), this matter was not pursued at the hearing and is deemed waived. In any event, a District exercising its appeal rights and following its policies in good faith is, as a matter of law, not "harassment."

Conclusion

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

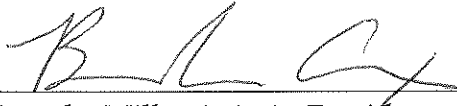
No costs.

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