Iowa State Board of Education
(Cite as 13 D.o.E. App. Dec. 106)

In re Crysta Fournier	:	
Pam McCalla, Appellant,	:	
v.	:	DECISION
Cedar Rapids Community School District, Appellee	:	[Adm. Doc. #3722]

The above-captioned matter was heard telephonically on February 19, 1996, before a hearing panel comprising Ron Riekena, consultant, Bureau of Food and Nutrition; Roger Foelske, administrative consultant, Bureau of Technical and Vocational Education; and Ann Marie Brick, J.D., legal consultant and designated administrative law judge, presiding. The Appellant, Pam McCalla, was telephonically "present," unrepresented by counsel. The Appellee, Cedar Rapids Community School District [hereinafter "the District"], was also "present" by telephone in the person of Nelson Evans Jr., director of student services, also *pro se*.

A hearing was held pursuant to Departmental rules found at 281--Iowa Administrative Code 6. Appellant seeks reversal of a decision of the Board of Directors [hereinafter "the Board"] of the District made on January 22, 1996, denying her request for open enrollment for her daughter, Crysta Fournier. Appellant is requesting *immediate* open enrollment for her daughter out of the Cedar Rapids Community School District to attend Alburnett. The Board denied the request at its January 22, 1996, meeting because the application was "received after the October 30, **1994**, deadline for the 1995-96 school year and it does not qualify for 'good cause.'"[1]

Authority and jurisdiction for this appeal is found in Iowa Code §282.18(5)(1995).

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[1]The application was not only late because it missed the October 30, 1994, deadline for the 1995-96 school year, it is also too late for Appellant to apply for the 1996-97 school year since she missed the October 30, 1995, deadline as well.

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.

Crysta Fournier is 17 years old and until this past January, she attended Kennedy High School in Cedar Rapids as a junior. Some time during the middle of that month, Appellant pulled her daughter out of the high school and applied for immediate open enrollment out of the District. This action was taken because of a racial incident that had occurred earlier in January between Crysta, who is white, and another Kennedy student, who is a black female.

Nelson Evans, testifying on behalf of the District, stated that the "incident" had been handled appropriately. He maintained that there were a lot of issues between the two girls to be settled and that several people had been involved in trying to resolve this matter. Appellant, however, strongly disagreed and remained unsatisfied. As a result, she has refused to send her daughter back to the Cedar Rapids' schools. She seeks an immediate open enrollment approval to attend Alburnett, but her request was denied by the Board at its January 22, 1996, meeting as being late without good cause.

The "dispute" or "incident" giving rise to Appellant's desire to open enroll out of the District was described by her as "racial harassment." However, it was difficult for the hearing panel to elicit the particular facts underlying that characterization. Apparently, a female black student "called Crysta a racist in front of administration." According to Appellant, Dr. Reed,[2] the high school principal, attempted to resolve the problem by speaking with both girls together. This accomplished nothing, according to Appellant, because the girl and several of her friends continued to call Crysta "Casper" and otherwise taunt her in the hallways at school. The administration spoke to both girls again. Finally, according to Appellant, "the administration's solution to this problem ended up being to pull Crysta from the classes both girls attended."[3] Crysta would then sit in the office during the class times that she would be together with the other girl. Unfortunately, this was not a good solution for two reasons: Appellant was dissatisfied that her daughter was being "punished" when it was the other girl who presented the problem; and the "threats" were then transferred to Crysta's

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2The Principal of Kennedy High School. Dr. Reed was not present to testify at the hearing.

3The record is conflicting on whether the girls' attended two or three classes together, but they did not attend all classes together.

home. Appellant testified that the student left "threatening" messages on Crysta's home answering machine. She was not specific about the nature of the threats. She just stated that neither she nor Crysta felt it was safe for Crysta to continue to attend high school at Kennedy.[4]

At the time of the hearing (February 19, 1996), Crysta had been out of school for six weeks. According to Appellant, the administration had not been in contact with her regarding her daughter's attendance at school or any alternative educational programming. Appellant testified that she left messages for the Superintendent but has not received any response. She then filed her open enrollment application, but was told by Dr. Micek, who is an associate superintendent,[5] that her open enrollment application would be denied because she had not met the deadline. For that reason, she did not appear before the Board when it met on January 22 to discuss her reasons for needing open enrollment immediately. She did, however, send a letter to Senator Harkin seeking his help. Senator Harkin's office called Appellant about three days prior to the appeal hearing to inform her that the other student had been transferred out of Kennedy High School as a result of a disciplinary action taken because of a matter unrelated to Appellant's case.

Mr. Evans testified that the District has an extended open enrollment application deadline with the "metropolitan schools" which include Marion, Linn-Mar, and College Community School Districts. These districts have extended the open enrollment deadline from October 30 to March 1 of the year preceding the requested open enrollment. Therefore, Mr. Evans stated the application for Crysta to open enroll to one of those "metro districts" could be approved for 1996-97.

According to Nelson Evans, the "offending" student no longer attends Kennedy High School, but Appellant testified that she refuses to return her daughter there because the administration mishandled this incident with her daughter. When Mr. Evans was asked why no one from the District had contacted Appellant about her daughter's failure to attend school, he stated that the administration felt that any attempt to enforce an attendance policy would only exacerbate the situation. Mr. Evans stated that although he had previously offered to allow Crysta to transfer to any other high school within the District, his offer was refused by Appellant.

4Since Crysta is over the age of 16, she is not subject to compulsory attendance. Again, the lack of specific testimony by either the Appellant or the District administration made it hard for the hearing panel to evaluate the "threats." There was no evidence presented which lead us to believe Appellant's fears were justified.

5Mr. Micek was not present to testify at the hearing.

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 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).

Although the State Board of Education has rulemaking authority under the open enrollment law, our rules do not expand the types of events that would constitute "good cause." The State Board has chosen to review, on appeal only, potentially "similar sets of circumstances" on a case-by-case basis. In re Ellen and Megan Van de Mark, supra at 408.

In the scores of appeals brought to the State Board following the enactment of the open enrollment law, only a few have merited reversal. We have heard nearly every reason imaginable deemed to be "good cause" by the Appellants. The State Board has refused to reverse a late application due to ignorance of the filing deadline, In re Candy Sue Crane, 8 D.o.E. App. Dec. 198 (1990); or for missing the deadline because the parent mailed the application to the wrong place, In re Casee Burgason, 7 D.o.E. App. Dec. 367 (1990); or when a bright young man's probation officer recommended a different school that might provide a greater challenge for him, In re Shawn and Desirea Adams, 9 D.o.E. App. Dec. 157 (1992); or when a parent became dissatisfied with a child's teachers, In re Anthony Schultz, 9 D.o.E. App. Dec. 381 (1992); or because the school was perceived as having a "bad atmosphere," In re Ben Tiller, 10 D.o.E. App. Dec. 18 (1993); or when a building was closed and the elementary and middle school grades were realigned, In re Peter and Mike Caspers, et al., 8 D.o.E. App. Dec. 115 (1990); or when a child experienced difficulty with peers and was recommended for a special education evaluation, In re Terry and Tony Gilkison, 10 D.o.E. App. Dec. 205 (1993); even when those difficulties stemmed from the fact that a student's father, a school board member, voted in an unpopular way on an issue, In re Cameron Kroemer, 9 D.o.E. App. Dec. 302 (1992). "Good cause" was not met when a parent wanted a younger child to attend in the same district as an older sibling who attended out of the district under a sharing agreement, In re Kandi Becker, 10 D.o.E. App. Dec. 285 (1993). In re Misty Deal involved a senior who wanted to open enroll out of her district because of what her father termed "harassment" on the part of both faculty and students, but this was not found to constitute "good cause" as provided by statute. In re Misty Deal, 12 D.o.E. App. Dec. 128 (1995).

The present case is very troubling, not only because of the racial tensions between the students, but because of the damaged relationship between the parent and the district administration. The immediate problem is not Appellant's failure to obtain "instant open enrollment out of Cedar Rapids," but her failure to send her daughter to school and the apparent inability of the District to persuade the mother to obtain satisfactory alternative education. Unfortunately, this is not a problem that can be remedied by the application of State Board precedent. First of all, prior precedent does not recognize the situation as being within the statutory definition of "good cause" or as a case appropriate for subsection 20 intervention. See, Iowa Code § 282.18(20). Secondly, there are remedies within the District

which should be exhausted by both parent and administration before State Board intervention is sought.[6]

Troubling as this decision is, we are simply of a belief that the stated reasons do not meet the "good cause" definition nor do they constitute a "similar set of circumstances consistent with the definition of good cause." Finally, we fail to recognize that the situation is one that "cries out" for the extraordinary exercise of power bestowed upon the State Board; this is not a case of such unique proportions that justice and fairness require the State Board to overlook the regular statutory procedures. Iowa Code §282.18(20).

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

III.
DECISION

For the reasons stated above, the decision of the Cedar Rapids Community School District's Board of Directors made on January 22, 1996, denying open enrollment application for Crysta Fournier is hereby recommended for affirmance. There are no costs of this appeal under Iowa Code § 290.4 to be assigned.

4-1-96
DATE

Ann Marie Brick
ANN MARIE BRYCK, J.D.
ADMINISTRATIVE LAW JUDGE

It is so ordered.

4-11-96
DATE

Betty L. Dexter
BETTY DEXTER, VICE-PRESIDENT
STATE BOARD OF EDUCATION

[6]Only the Appellant and the administration can answer whether they have tried as hard as they could have to resolve this problem in Crysta's best interest. However, examples which come to mind include using the District's harassment policy on the parent's part or enforcing the District's attendance policy on the administration's part.