

Iowa State Board
of Education
(Cite as 13 D.o.E. App. Dec. 120)

In re Meranda Guse :

Kandyce Guse, :
Appellant, :

v.

DECISION

George Community School :
District, :
Appellee. :

[Adm. Doc. #3677]

The above-captioned matter was heard telephonically on December 4, 1995, before a hearing panel comprising Mary Jo Bruett, Bureau of Planning, Research and Evaluation; Sandy Sandvick, Bureau of School Administration and Accreditation; and Ann Marie Brick, Legal Consultant and designated administrative law judge, presiding. Appellant Kandyce Guse, was present by telephone, unrepresented by counsel. Appellee George Community School District [hereinafter "the District"] was present by phone and represented in the person of Superintendent Jerry Nichols, also appearing pro se.

An evidentiary hearing was held pursuant to Departmental rules found at 281-Iowa Administrative Code 6. Appellants seek reversal of a decision made by the Board of Directors [hereinafter "the board"] of the district made on September 21, 1995, denying Appellant's timely request for open enrollment for her daughter to attend the Boyden-Hull Community School District for the 1996-97 school year.

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 this appeal.

The relevant facts of this appeal are few. Appellant's daughter, Kandyce, was four years old when the application for open enrollment was filed on September 7, 1995. Ms. Guse had until June 30 of this school year to do so because a parent has

until June 30 of the preceding school year to apply for kindergarten open enrollment. See, 281--Iowa Administrative Code 17.7. Ms. Guse wanted Meranda to attend kindergarten in the Boyden-Hull School District for the 1996-97 school year. Her request was denied by the Board on September 21, 1995, by a vote of 3-2.

Appellant was notified of the denial of her application by a letter from the Superintendent which stated in part as follows:

George School District has one of the finest preschool primary programs in Northwest Iowa. This program will help Meranda grow educationally and socially to her fullest capacity. We encourage you to consider sending Meranda to the George kindergarten program next year. Your application is enclosed. If you desire to appeal this decision, you may do so by contacting the Department of Education.

Mr. Jerry Nichols has been a superintendent at George School District for the past five years. Commencing with the 1995-96 school year, he has been a "shared superintendent" with the Little Rock School District. When asked if the Board denied this timely-filed application because of financial considerations, he replied "no". He testified he didn't think finances were a factor in the denial because the District is in fairly good financial shape at this point. He admitted that the Board knew it did not have the legal right to deny this application and if the application was appealed to the State Board, it would be reversed. However, when pressed further, he testified that his Board denied the application "to make a statement".

The administrative law judge advised the Superintendent that if his Board wanted to "make a statement" to the State Board that he could recount the comments made by the majority board members given as their reasons for denying this open enrollment application; and that these "statements" would be put into the facts of the appeal decision. The Superintendent wanted to do this. His testimony can be summarized as follows:

Basically, his Board looked at the reason checked by Appellant on her application for open enrollment and found that it was "convenience". In light of the educational program at George, the board did not feel that "convenience" was a sufficient reason to open enroll out of the district.¹ The Superintendent testified that

¹It should be noted that the Superintendent's statements represent only three of the five Board members since two voted to approve the open enrollment application. Additionally, it should be mentioned that the transcript of the minutes of the Board's September 21, 1995 meeting contain no mention of reasons Appellant's application was denied or of any discussion that took place among Board members. That is why Superintendent Nicholas was asked to elaborate on any discussions that might have taken place.

it is the concept of open enrollment and the direction it is taking that his board is concerned about. He stated that when open enrollment was first introduced into this state, the idea was that students could open enroll exclusively for educational reasons. His board felt that since that time we have gone almost 180 degrees in the opposite direction. Presently, not only educational, but almost any reason at all suffices for open enrollment. His board is opposed to that idea. "I think if it [open enrollment] were strictly educational, they would not have a problem with it."

Appellant testified that the wrongful denial of her application by the George Board cost her a day of vacation from work. She stated that having three young children, she saves her vacation days for when the children are ill. Because of this experience, Appellants stated she intends to open enroll her other children out of the district as well.

Appellant then asked the Superintendent why school buses from adjoining districts were no longer allowed to pick up open enrolled students from the George District. The Superintendent stated that their present policy, which does not allow buses to cross into the George District lines, was enacted to stop a practice of which the Board had never approved.

II. Conclusions of Law

Iowa's open enrollment law provides that, in general, applications for enrollment out of a school district must be filed between July 1 and October 30 of the year preceding the school year in which open enrollment will take place. Iowa Code § 282.18(2) (1995). An exception is made for kindergarten students who have until June 30 of the preceding year to file their applications. 281 Iowa Administrative Code § 17.7. In considering the open enrollment applications for a kindergarten pupil, the resident and receiving district are not precluded from administering board-adopted policies related to enrollment loss caps, insufficient classroom space or the requirements of a desegregation plan or order. *Id.* However, if the application is timely-filed and none of the preceding policies apply, then the Board has no authority to deny the application. As we have said on many prior occasions, the use of the term "application" -- which implies that the parent seeks Board approval of the open enrollment request -- is a misnomer. "If the form is timely filed, the resident district board has no discretion to deny the open enrollment..." See e.g. In re Brett Austin Hansen, In re Morgan Nelson, In re Stephen and Kevin Ballou, 13 D.o.E. App. Dec. 7 (1995); In re Nicholas, Kimberly, Lindsay, and Justin Greenslade, 10 D.o.E. App. Dec. 259 (1993); In re Trent and Tonya Frank, 9 D.o.E. App. Dec. 329 (1992); In re Amanda and Emily Lynam, 9 D.o.E. App. Dec. 118 (1991). Therefore, there is

literally no reason that can be found in the law for the Board to deny Appellant's request for open enrollment for Kandyce for next year.²

As far as Appellant's complaint about the recently enacted Board policy preventing the buses of contiguous districts from entering to pick up open enrolled students, the Board had every legal right to enact such a policy. The law has always been clear that it is the responsibility of the parent to transport the open enrollment pupil without reimbursement "to and from a point on a regular school bus route of the receiving district." 281--Iowa Administrative Code § 17.9(1). A district board can allow the buses of receiving districts to enter its boundaries to pick up open-enrolled students, but there is no legal obligation to do this. Apparently, other districts had been crossing George District's boundaries without the Board's permission. The recently enacted policy was an attempt to stop a practice of which the George Board had never approved.

The Appellant in this case has suffered inconveniences beyond the burden of time and energy required to prosecute her appeal. She has been forced to take a day of vacation from her job which may prejudice her ability to care for her sick children in the future without incurring some additional financial obligation. The District and the Board knew full well it had no basis on which to deny her timely-filed application. Once again, if there were any way to compensate the Appellant for her time and inconvenience, the hearing panel would suggest that the State Board order it. Unfortunately, Iowa Code Chapter 290 does not provide for such sanctions.

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

III. Decision

For the foregoing reasons, the decision of the George Community School District Board of Directors, made on September 21, 1995, denying Appellant's application for open enrollment is hereby recommended for reversal. There are no costs of this appeal to be assigned pursuant to Iowa Code Chapter 290.

²Even though the Superintendent stated that the Board already knew this, the administrative law judge made it clear at the hearing that there was no legal basis upon which to sustain the Board's action so that Appellant could plan appropriately for next year prior to getting the written decision.

4-1-96

DATE

Ann Marie Brick

ANN MARIE BRICK, J.D.
ADMINISTRATIVE LAW JUDGE

4-11-96

DATE

Betty L. Dexter

BETTY DEXTER, VICE-PRESIDENT
STATE BOARD OF EDUCATION