

**Iowa State Board
of Education**
(Cite as 13 D.o.E. App. Dec. 150)

In re David Watkins :

Kim Bartusek, :
Appellant, :

v. :

DECISION

Des Moines Independent :
Community School District, :
Appellee :

[Adm. Doc. #3717]

The above-captioned matter was heard telephonically on March 8, 1996, before a hearing panel comprising Ron Mells, consultant, Bureau of Special Education; Susan Fischer, consultant, Bureau of Practitioner Preparation and Licensure; and Ann Marie Brick, J.D., legal consultant and designated administrative law judge, presiding. The Appellant, Kim Bartusek, was "present" by telephone, unrepresented by counsel. The Appellee, Des Moines Independent Community School District [hereinafter "the District"], was also "present" telephonically in the person of Dr. Tom Jeschke, 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 December 12, 1995, which denied her application for open enrollment out of the District, beginning in the 1996-97 school year. Authority and jurisdiction for the appeal are found in Iowa Code §282.18(5) (1995).

**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.

Kim Bartusek and her husband moved to Des Moines from Las Vegas, Nevada, in June 1995. At that time, they decided to rent a home while they looked for a suitable place to purchase. In the meantime, they enrolled their 11-year-old son, David, at Merrill Middle School to begin sixth grade in the Fall of 1995.

Ms. Bartusek testified that she was unaware of any time lines or limitations on open enrollment.¹ Appellant filed her application for open enrollment in November, 1995, after she and her husband decided that they would like to buy a home in the Johnston area. Although they have not yet purchased a home in the Johnston School District, they intend to do so some time next year. Appellant applied for open enrollment so that David can begin seventh grade in the Fall of 1996 in the Johnston Middle School. This way, his school year will not be disrupted if they decide to buy a home after the start of school. Ms. Bartusek testified that she is trying to avoid any more disruptions in David's adjustment to school because he has been diagnosed with Attention Deficient Disorder (ADD). This diagnosis occurred in Las Vegas during the middle of his fifth grade year.² Ms. Bartusek stated that "the changes David faced in the move were very traumatic for him and now the District is forcing him to face another change."

Dr. Tom Jeschke, director of student services, testified that the application period for open enrollment is from July 1 through October 30th for the year preceding the year for which open enrollment is sought. The postmark on the envelope is used as the filing date. Ms. Bartusek's application was postmarked November 29, 1995. Since the application was nearly a month late, it was denied due to untimeliness. After determining that the application was late, the District looked for statutory "good cause." Under the provisions of 281--IAC 17.4, a parent's application for open enrollment which is filed after the deadline of October 30 can be granted "if good cause exists for the failure to meet the deadline." In general, good cause is defined as a change in the status of the pupil's residence or a change in the status of the pupil's resident district taking place after October 30 which results in the desire of the parent to obtain

¹Merrill Middle School mails a newsletter to the parents of each student on a monthly basis. The September newsletter describes the open enrollment policy and deadlines for application. Applicant said she never saw this newsletter.

²Section 504 of the Rehabilitation Act of 1973 [§504] (29 USC §794(a) (West Supp. 1996) prohibits discrimination against covered individuals on the basis of their disability. The relevant part of §504 states:

No otherwise qualified individual with a disability in the United States, as defined in §706(a) of this Title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service.

Id.

Several cases have held that a student who is diagnosed with Attention Deficient Disorder [ADD] is disabled under the definition of §504. There is no evidence in the record that David's disorder could not be appropriately accommodated in the Des Moines Schools. As Dr. Jeschke pointed out, even after the family moves to Johnston, they have an absolute right to let David remain at Merrill Middle School under the provisions of 281--17.8 which states in part: "If a parent/guardian moves out of the school district of residence, and the pupil is not currently under open enrollment, the parent/guardian has the option for the pupil to remain in the original district of residence as an open enrollment pupil with no interruption in the education program. The parent/guardian exercising this option shall file an open enrollment request form with the new district of residence for processing and record purposes. This request shall be made no later than the third Thursday of the following September. Timely requests under this subrule shall not be denied."

open enrollment for the following school year. Since there has been no change in the status of the Des Moines School District, the only relevant statutory good cause relates to a change in David's residence and includes:

- a) A change in the family residence due to the family's moving from the district of residence anytime from October 31 through June 30 of the school year preceding the school year for which open enrollment is requested.
- b) A change in the state of residence allowing a parent/guardian moving into an Iowa school district from out of state to obtain open enrollment to a different district from their new district of residence.³
- c) A change in the marital status of the pupil's parents.
- d) A guardianship proceeding.
- e) Placement of the child in foster care.
- f) Adoption.
- g) Participation in a foreign exchange program.
- h) Participation in a substance abuse or mental health treatment program.
- i) A similar set of circumstances related to the resident status of the child consistent with the provisions of good cause.

281-Iowa Administrative Code 17.4(1).

Dr. Jeschke testified that special education and attention deficient disorder are not among the "good cause" reasons for granting a late request for open enrollment. That is because each district is responsible for providing these services and the Des Moines District does provide appropriate programming to meet these needs.

Dr. Jeschke further stated that the disruption to David's school program was not being caused by the Des Moines District. The Des Moines District would be happy to allow David to remain

³When good cause is established so that a parent may file for open enrollment after the deadline of October 30, that extension of time is until June 30 of the school year preceding the school year for which open enrollment is requested. In this case Appellant had until June 30, 1995, to apply for immediate open enrollment out of her district for the 1995-96 school year. When she failed to meet that deadline, she became ineligible for the "good cause" rule stated in 17.4(1)(b). Thereafter, she fell within the regular deadlines for all parents in the Des Moines District.

in Merrill Middle School even after the family moves to the Johnston District. In addition, Dr. Jeschke noted that when the family purchases a home in the Johnston School District, good cause will be met for David to attend in that district. Consequently, if a home is purchased between now and the beginning of school, David's education need not be interrupted.

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) (1995).

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).

These "statutory excuses" have been set forth above and found inapplicable to the present case. We agree with the District in concluding that statutory "good cause" does not exist.

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, 8 D.o.E. App. Dec. 405 (1991).

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); nor because the school was perceived as having a "bad atmosphere," In re Ben Tiller, 10 D.o.E. App. Dec. 18 (1993); nor 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); nor when a child experienced difficulty with peers (In re Misty Deal, 12 D.o.E. App. Dec. 128) 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). Nor was "good cause" 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 this case, as in all of the others, we are not being critical of Appellant's reasons for wanting open enrollment. 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. See Iowa Code § 282.18(20)(1995).

As to the merits of this case, we see no error in the decision of the Board of the District. The District's application of its policy is consistent with the State law. If the Appellant does not wish to disrupt David's education during the middle of the school year, she has two options under the law:

1. She has an absolute right to allow David to remain in the Des Moines District even after they move to the Johnston School District; or
2. She can diligently look for and sign a contract for a house in the Johnston District prior to the beginning of the next school year so that David can begin school in Johnston as a resident in the Fall of 1996.

There are no grounds, however, to justify reversing the District Board's denial of the open enrollment in this case. Therefore, 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 decision of the Des Moines Independent Community School District's Board of Directors made on December 12, 1995, denying Appellant's untimely open enrollment request for David Watkins to attend Johnston Community School District for the 1995-96 school year is hereby recommended for affirmance. There are no costs of this appeal to be assigned.

4-30-96
DATE

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

It is so ordered.

5-10-96
DATE

Corine Hadley
CORINE HADLEY, PRESIDENT
STATE BOARD OF EDUCATION