IOWA STATE DEPARTMENT OF EDUCATION
(Cite as 13 D.o.E. App. Dec. 182)

In re Spenser Foltz	:	
Lynne Foltz, Appellant,	:	
v.	:	DECISION
Des Moines Independent Community School District, Appellee.	:	[Admin. Doc.#s 3678, 3720]

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, Lynne Foltz, was telephonically "present," unrepresented by counsel. The Appellee, Des Moines Independent Community School District [hereinafter "the District"], was also "present" by telephone 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 request for open enrollment out of the District, beginning in the 1996-97 school year. Authority and jurisdiction for this appeal are found in Iowa Code §282.18(5)(1995).

I.
FINDINGS OF FACT

The administrative law judge finds that she and the Director of the Department of Education have jurisdiction over the parties and subject matter of the appeal before them.

Appellant Lynne Foltz is the single parent of Spenser Foltz, who will begin first grade in the fall of the 1996-97 school year. This is mother's third appeal to the Department of Education. She has applied for Spenser's open enrollment to the Norwalk Community School District on three different occasions; she has been denied by the Des Moines District all three times. The procedural background underlying these appeals is more convoluted than the facts pertaining to the question of the open enrollment itself. Because of that, the background of Ms. Foltz's three appeals merit mention as well.

The First Appeal - School Year 1995-96:

Lynne Foltz timely-filed her open enrollment application for Spenser to attend kindergarten in Norwalk for the 1995-96 school year. Her request was denied on November 15, 1994, under the "composite-ratio" portion of the District's open enrollment/ desegregation policy.

She appealed to the State Board and her appeal was consolidated for hearing along with 36 other sets of parents who were also denied open enrollment under the District's composite-ratio policy. The consolidated appeals were heard on March 1, 1995. At that time, the State Board's earlier decision[1] reversing the "composite-ratio" portion of the open enrollment/desegregation policy was on appeal in Polk County District Court.[2] The State Board upheld its earlier decision and reversed the Des Moines District's November 15, 1994, denial of the open enrollment applications for all of the Appellants who attended the consolidated appeal hearing held on March 1, 1995. Those children were allowed to open enroll out of the Des Moines District for the 1995-96 school year. See, In re Abigail Jungjohan, *et al.*, 12 D.o.E. App. Dec. 215 (1995). Unfortunately, Lynne Foltz did not appear at that hearing and did not call to request a continuance. Therefore, her appeal was dismissed on March 3, 1995.

The Second Appeal - 1995-96 School Year:

Ms. Foltz applied again for open enrollment on August 4, 1995, for the 1995-96 school year. The District denied her application on September 7, 1995, because it was late "without statutory good cause."[3]

Ms. Foltz appealed to the Department of Education and a telephonic hearing was held on December 4, 1995. At that time, Appellant explained her reasons for requesting open enrollment as follows:

> I work at Regency Care Center in Norwalk. Spenser goes to day care at the Child's Academy of Norwalk. I work different hours at Regency Care Center. I am a nurse and am required to be on-call. If I get called in late at night, then Spenser goes to a babysitter that lives in Norwalk. If I'm working days, then if Spenser gets

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1In re Scott Wilson, *et al.*, 11 D.o.E. App. Dec. 238 (1994).

2The appeal was decided in the District's favor by Judge Bergeson on June 1, 1995. See, Des Moines Ind. Comm. Sch. Dist. v. Iowa Dept. of Education, AA2432 (June 1, 1995). Since that time, the State Board has upheld the District's denial of open enrollment applications under the composite-ratio policy.

3The deadline she was required to meet was June 30, 1995, for students commencing kindergarten in the fall of 1995.

> sick or hurt at school, it is easier for me to get him quickly to be taken to the doctor. I feel that where our lives rotate in the Norwalk School District that I would like for Spenser to go to Norwalk to school. I have moved in with a friend from work that lives in the Norwalk District. I would like to move back into my mobile home that I'm buying in Des Moines. Spenser would like to move back home but continue to go to school in Norwalk with all his friends from daycare. (Appellant's Affidavit of Appeal.)

Appellant testified that she considers Des Moines her home. She lives in Norwalk during the school year so Spenser can go to school there, but she returns to her mobile home during the summer. Ms. Foltz was advised orally that her open enrollment application was late; there was no statutory "good cause" to excuse the late filing; and that even if she hadn't been late, her open enrollment application was now restricted by the waiting list under the District's composite-ratio policy. She was strongly urged to consider a permanent move to Norwalk.[4]

Third Appeal - 1996-97 School Year:

Before her appeal was decided, Appellant filed an open enrollment application for Spenser to attend Norwalk as an open-enrolled first grader in the fall of the 1996-97 school year. Although Appellant testified that she applied for open enrollment in a timely manner, the District did not receive her application until November 2, 1995. Therefore, it was denied by the District's Board on December 13, 1995, as "late without good cause." Mr. Jeschke testified that the postmark indicated that the application had been filed after the October 30th deadline. The hearing panel did not have any evidence to contradict this position.

At this appeal hearing, Appellant once again affirmed the fact that she has "moved in with a friend from work so Spenser will be able to stay with his friends and attend school in Norwalk." She did testify that she is planning on moving into the Norwalk District as soon as she can find a piece of land to move her double-wide trailer upon. She hopes to be able to do this within the next two years. "I would like to be able to live in my own house that I am buying instead of living with friends and paying them some rent also." (Affidavit of Appeal, January 10, 1996.)

4By the time Appellant filed her second application for open enrollment, the Des Moines case had been decided in favor of the District's composite-ratio policy. By the time her appeal was heard, she was well past the October 30th deadline for open enrollment for the 1996-97 school year.

At this time, Spenser has almost completed kindergarten in Norwalk. Appellant testified that she has not been paying tuition to the Norwalk School District as a nonresident.[5]

II.
FINDINGS OF FACT

The Iowa Open Enrollment Law creates a conditional right for parents to select the school district of attendance for their children. Iowa Code §282.18. One of the primary conditions is timely filing. Id. at (2). There is an October 30th deadline imposed by the Law and applications filed by that date will be approved for open enrollment the following year. In order for Appellant to be approved for the 1996-1997 school year, she had to apply by October 30, 1995. She did not.

However, at the time the Open Enrollment Law was written, the Legislature apparently recognized that certain events would prevent a parent from meeting the October 30th 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 of who have "good cause" for missing the October 30th deadline. Iowa Code §282.18(2), (4), (1995).

Although Appellant certainly feels that she has "good cause" for wanting to open enroll to the Norwalk District, "good cause" is defined by statute. The Legislature chose to define the term "good cause," rather than leaving it up to parents or school boards to determine. Although this may sound unfair to the parent, it was the Legislature's determination that all parents be treated equally in all school districts throughout the State. Therefore, the statutory definition of "good cause" addresses two types of situations that must occur before the filing deadline is excused: 1. a change in the child's residence; or 2. a change in the status of the resident school district. In particular, the statute states:

> . . . 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

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5Iowa Code §282.6(1995) provides in pertinent part that "[e]very school shall be free of tuition to all actual residents ... [R]esident means a person who is physically present in a district, whose residence has not been established in another district by operation of law and ... is in the district for the purpose of making a home and not solely for school purposes." Id.

> 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" set forth above have been 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 (1995); 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).

It is quite clear, given all the evidence in this case, that Appellant never established a bona fide residence in Norwalk. She has never contended otherwise. Appellant has never deviated from the fact that the purpose of her relocation to "her friend's residence in Norwalk" was for any reason other than to allow Spenser to attend school there. She made it quite clear that when school is over during the summer, she returns to her mobile home in Des Moines. As she never truly "resided" in Norwalk as the law uses that term, Appellant is not entitled to attend the Norwalk School District tuition-free. As a result, she would be "obligated" under the law to pay tuition to Norwalk for the 1995-96 school year. We would caution Appellant to take this into account before she enrolls Spenser in first grade for the 1996-97 school year.

As to the merits of this case, we see no error in the decision of the Des Moines Board since the District's application of its policy is consistent with the State Law.

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 Spenser Foltz to attend the Norwalk Community School District for the 1996-97 school year, is hereby recommended for affirmance. There are no costs to this appeal to be assigned.

5/24/96
DATE

ANN MARIE BRICK, J.D.
ADMINISTRATIVE LAW JUDGE

It is so ordered.

5/24/96
DATE

TED STILWILL
DIRECTOR