

IOWA STATE DEPARTMENT  
OF EDUCATION  
(Cite as 13 D.o.E. App. Dec. 263)

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*In re Mariah Marine* :  
  
Wendell & Mary Marine, :  
Appellants, :  
  
v. : DECISION  
  
West Liberty Community :  
School District, :  
Appellee. : [Admin. Doc. # 3786]

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The above-captioned matter was heard telephonically on June 20, 1996, before a hearing panel comprising Sandy Sandvick, Bureau of School Administration and Accreditation; Roger Stirler, Bureau of Internal Operations; and Ann Marie Brick, J.D., legal consultant and designated administrative law judge, presiding. The Appellants were represented by Mary Marine who was telephonically "present," unrepresented by counsel. The Appellee, West Liberty Community School District [hereinafter "the District"], was also "present" by telephone in the person of Dr. Lee Hoover, superintendent, also *pro se*.

An evidentiary hearing was held pursuant to Departmental rules found at 281--Iowa Administrative Code 6. Appellants sought reversal of a decision of the Board of Directors [hereinafter "the Board"] of the District made on May 20, 1996, which denied their timely-filed application 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 State Board of Education have jurisdiction over the parties and subject matter of the appeal before them.

The facts are few and undisputed. Appellants live in West Liberty, Iowa, and have one daughter, Mariah Marine. Appellants timely-filed an open enrollment application for their daughter to attend kindergarten in the West Branch Community School District, beginning in the Fall of 1996. They wanted to open enroll because "[a]ll our business and personal ties are with West Branch and our babysitting relatives are in the West Branch District." [Affidavit of Appeal.]

In spite of Superintendent Hoover's recommended approval of the open enrollment application, it was denied by the District Board by a vote of 3 to 2 on May 20, 1996. The parents testified that they read the reason for the board's denial in their local paper on May 23, 1996. The news item read as follows:

In an unusual vote, the board voted 2-3 to deny open enrollment for a student from West Liberty to West Branch. Superintendent Hoover asked the members why they voted 'no' and all three responded that people are tired of hearing the board approve enrollments out of the district. Hoover said that because this application was within the timelines, the state would overrule the board and allow the transfer. One board member said then it would be the state's decision not ours. Another member stated that if parents wanted their children to attend school in another district, they should pay tuition for that child, not our district money going to that school.

West Liberty Index, May 23, 1996.

This is not the Board's first appearance before the State Board of Education involving the denial of legitimate, timely-filed open enrollment applications. In re Jason Simmonds, 12 D.o.E. App. Dec. 35 (1994); In re Jeffrey Parry, 12 D.o.E. App. Dec. 36 (1994); In re Jacob D. Mills, 12 D.o.E. App. Dec. 37 (1994); In re Jaime Clester, 12 D.o.E. App. Dec. 62 (1994); In re Brianna Shea Hutchinson, 12 D.o.E. App. Dec. 376 (1995); In re Sara Ryerson, 12 D.o.E. App. Dec. 377 (1995). This is not a situation where we have a school board that does not know the law. What we have here is a school board that will not obey the law. Although parents may have the right to appeal an erroneous Board's decision, the real problem here is the "chilling effect" this Board's position on open enrollment (as published in the newspaper) has on the exercise of parental choice. It would take a lot of fortitude for a parent in a small town like West Liberty to ask to leave the District knowing that their decision to do so could be publicly chided by the Board in the local newspaper. "[I]f parents wanted their children to attend school in another district, they should pay tuition for that child ..." West Liberty Index, supra.

## II. CONCLUSIONS OF LAW

Iowa's Open Enrollment Law provides that, in general, applications for open enrollment out of the school district must be filed between July 1st and October 30th of the year preceding the

school year in which open enrollment will take place.<sup>1</sup> Iowa Code section 282.18(5) (1995). We have previously stated that the use of the term "application" in the statute is a misnomer because it implies that the parents seek Board approval of the open enrollment request. See, In re Caroline Schoonover, 13 D.o.E. App. Dec. 260, 261 (1996) (citing In re Amanda and Emily Lyman, 9 D.o.E. App. Dec. 118, 119 (1991)). The State Board has clearly stated that

If the form is timely-filed, the resident district board has no discretion to deny the open enrollment, unless the district is under voluntary or court-ordered desegregation. That exception is not applicable in this case. Therefore, there is literally no reason to be found in the law for the Board to deny applicants' request.' ...

Id.

Another troublesome aspect of this Board's action in denying timely-filed applications for open enrollment is that there appears to be no "downside" for the individual board members who vote "no." They do not have to file a timely notice of appeal to the State Board; the parents do. The individual board members do not have to accommodate their schedules to attend an appeal hearing; the superintendent appears on their behalf. If, because of these board members' public stance in opposition to open enrollment, fewer parents apply for open enrollment or fail to appeal an erroneous denial, these board members feel they have saved the District money.<sup>2</sup>

As we have said before:

The Appellants in this case have been inconvenienced at best and at worst, have had their lives upset in one or more ways because of the Board's position on their open enrollment applications. Perhaps this is because the members of the Board do not have the opportunity, as we do on the hearing panel, to hear the anguish and frustration, and in many cases, the tears of parents who are forced to go through the appeal process

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<sup>1</sup> Beginning July 1, 1996, the Legislature has lengthened the period of open enrollment for children in grades 1 through 12 to January 1 of the year preceding the school year for which open enrollment is sought. S.F. 2201, 76th G.A., 2d Sess. (1996).

<sup>2</sup> Perhaps if the board members who vote against timely-filed open enrollment applications were asked to appear before the State Board to explain their rationale, we could better understand their position.

to enforce their legal right to choose a school district they feel is best for their children. If there was any way to compensate the Appellants for their time and inconvenience, the hearing panel would suggest that the State Board order it.

In re Brett Austin Hansen; In re Morgan Nelson; In re Stephen and Kevin Ballou, 13 D.o.E. App. Dec. 7, 12 (1996).

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

III.  
DECISION

For the foregoing reasons, the decision of the West Liberty Community School District's Board of Directors made on May 20, 1996, denying Appellants' timely-filed open enrollment request for their daughter, Mariah Marine, is hereby recommended for reversal. There are no costs of this appeal to be assigned under Iowa Code section 290.4.

June 28, 1996  
DATE

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

It is so ordered.

August 8, 1996  
DATE

Corine Hadley  
CORINE HADLEY, PRESIDENT  
STATE BOARD OF EDUCATION