

**IOWA STATE BOARD  
OF EDUCATION**  
(Cite as 17 D.o.E. App. Dec. 112)

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*In re Ashley and Jared Jensen* :

Steve & Annette Jensen :  
Appellants,

v. : DECISION

United Community School :  
District,  
Appellee. :

[Admin. Doc. #4061]

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The above-captioned matter was heard on February 22, 1999, before Ann Marie Brick, legal consultant and designated administrative law judge. Appellants, Steve and Annette Jensen, were present and were unrepresented by counsel. Appellee, United Community School District [hereinafter, "the District"], was present in the persons of Don Riemenschneider, superintendent, and Judith L. Hand, board secretary. The District was represented by attorney Ron Peeler of Ahlers Law Firm, Des Moines, Iowa.

An evidentiary hearing was held pursuant to departmental rules found at 281 Iowa Administrative Code 6. Authority and jurisdiction for this appeal are found at Iowa Code sections 282.18 and 290.1(1999). 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 Appellants seek reversal of a decision of the Board of Directors [hereinafter, "the Board"] of the District made on November 12, 1998, denying their open enrollment applications for the 1998-1999 school year for their children, Ashley and Jared.

**I.  
FINDINGS OF FACT**

Steve and Annette Jensen and their children, Ashley and Jared, live in Ames. Their home is located in the United Community School District. At the time of the appeal hearing, Ashley was enrolled in grade 6 in the Gilbert Community School District and Jared was enrolled in grade 3, also in Gilbert.

Prior to moving to their home in the District, the Jensens lived in the Ames Community School District, where Ashley and Jared attended Sawyer Elementary

School. Jared experienced some problems in school and was later diagnosed by a psychologist with Attention Deficit Hyperactivity Disorder and Asperger's Syndrome. The Jensens decided that both children would benefit from attending a smaller school district. They investigated several and decided they preferred the Gilbert Community School District, based on a number of factors. At the time they were considering purchasing their home in the District, United operated a whole grade sharing program with Gilbert and the Boone Community School District. The District operated its own K-5 program and a joint 6<sup>th</sup> grade program with Boone. The District's 7-12 grade students attended Gilbert and Boone.

The Jensens moved into their home in the United District in April 1998. Jared's psychologist recommended that he finish the 1997-98 school year at Sawyer Elementary, in the Ames District. Both Jensen children were allowed to do so under the "continuation" provision of the Open Enrollment Law. That provision permits students to remain in their original district with no interruption in the educational program when the parents change their district of residence.

In July 1998, the District held a public meeting about its proposed new sharing agreement, which would be with Boone only and not include Gilbert. The Jensens were opposed to ending the sharing agreement with Gilbert because they had planned on both children attending that district. In addition, they were concerned about possible negative effects on Jared of entering several different schools within a few years because of the sharing agreement.

In August 1998, Mr. Jensen and the children moved in with his aunt and uncle who lived in the Gilbert District. The Jensens did not attempt to sell their home in the District. Mr. Jensen testified that he was told that living in a district for one month would establish residency, but the person who told him this was not an attorney. Also in August 1998, the Jensens enrolled Ashley and Jared in the Gilbert schools, where both did well. The living arrangement with Mr. Jensen's relatives was discontinued after five weeks because it created numerous hardships. Ashley and Jared continued to attend the Gilbert schools.

On October 27, 1998, the Jensens filed applications with the District for open enrollment to Gilbert under the "continuation" provision of the Open Enrollment Law that they had used in April.

Judith L. Hand, the board secretary for the District, testified that she received the Jensens' applications on October 28, 1998. She called Jim Tyson, a Department of Education consultant and discussed the applications with him. He told her they did not qualify under the "continuation" provision because they were never residents of the Gilbert District. He also told her that the statutory good cause provision did not apply

because they had not "changed their residence" in the time period between the previous January 1 and the following June 30 as required by 281 IAC 17.4(1). Ms. Hand further testified that the District had received no information that the Jensens' residence had changed. In fact, these applications included the same home address as the applications approved by the Board in April 1998. The District concluded that the Jensens' residence had not changed. The Board then denied the applications at its November 12<sup>th</sup> meeting on the grounds they were not timely: they were filed after the January 1 deadline for regular applications and after the June 30 deadline for statutory good cause applications. United did not count the Jensen children when the student count was taken in September because they were not enrolled.

Superintendent Riemenschneider, testifying for the District, commented on aspects of the new sharing agreement with Boone. He said that some of the provisions with which the Jensens disagreed were the result of compromises made in order to reach an agreement.

## II. CONCLUSIONS OF LAW

The purpose of the Open Enrollment Law is to allow parents and guardians to maximize educational opportunities for their children. Iowa Code section 282.18(1)(1999). In order to take advantage of this opportunity, the law requires that parents and guardians follow certain minimal requirements. These include filing the application for open enrollment by January 1 of the preceding school year, unless they have statutory good cause for the late filing or the student will be in kindergarten the following year. Iowa Code section 282.18(2)(1999). The rules of the State Board of Education establish a June 30 deadline for good cause and kindergarten applications. 281 Iowa Administrative Code 17.4.

Another provision of the law, pertinent to this appeal, reads as follows:

If a request to transfer is due to a change in family residence, 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, and the child, who is the subject of the request, is not currently using any provision of open enrollment, the parent or guardian of the child shall have the option to have the child remain in the child's original district of residence under open enrollment with no interruption in the child's educational program. If a parent or guardian exercises this option,

the child's new district of residence is not required to pay the amount calculated in subsection 7, until the start of the first full year of enrollment of the child.

Iowa Code section 282.18(9)(1999).

The above Code section 282.18(9), often referred to as the "continuation" provision, is the basis for the Jensens' appeal. They claim that they established residency in the Gilbert District and the children are, therefore, entitled to remain there after the family returned to their residence in the District. The District maintains that their residency did not change and, as a result, the applications are subject to the January 1 and June 30 deadlines in the Law.

The primary issue in this case is whether or not the Appellants ever established a bona fide residence in the Gilbert District. If they did, then they qualify for the "continuation" provision and the District Board's decision on November 12 must be reversed. Conversely, if they did not establish a good faith residence in Gilbert, then there could have been no "change in family residence" for purposes of qualifying for the continuation provision.

Over the years, the State Board of Education has been presented with a variety of methods used by parents to attempt to establish residency for their children in another school district that they consider more desirable. As early as 1924, the Iowa Supreme Court defined the elements necessary for school district residency. *See, Mt. Hope School Dist. v. Hendrickson*, 197 Iowa 191, 197 N.W. 47 (1924). "Mere intention cannot effect the change [of residence], but the intention to remain, coupled with the act of actual residence, establishes the domicile. ... If a minor leaves the home of his father, to reside in another place for the sole purpose of securing free public school education, without bringing with him an actual residence, and with the intent to return to his former residence, he does not become an actual resident within the purview of our school law." (197 Iowa at 194, 197 N.W. at 48.)

In 1989, the following language was codified in law:

Persons between five and twenty-one years of age are of school age. ... Nonresident children shall be charged the maximum tuition rate as determined in section 282.24, subsection 1, with the exception that those residing temporarily in a school corporation may attend school in the corporation upon terms prescribed by the board, and boards discontinuing grades under section 282.7, subsection 1 ... .

For purposes of this section, "resident" means a child who is *physically present* in a district, whose residence has not been established in another district by operation of law, and who meets any of the following conditions:

1. *Is in the district for the purpose of making a home and not solely for school purposes.*
2. Meets the definitional requirements of the term "homeless individual" under 42 U.S.C. § 11302(a) and (c).
3. Lives in a juvenile detention center, foster care facility, or residential facility in the district.

Iowa Code section 282.1(1999)(emphasis added).

It is clear that the main conditions to be met by the Jensens are physical presence in Gilbert and the intention to make a home there — not solely to be able to attend school there. The Jensen children are not homeless nor do they meet the conditions of subparagraph 3 above.

Because intent is such an important factor in determining residency, Appellants' statements about their living arrangements in Gilbert are relevant. In that regard, Mr. Jensen testified that they were "trying to get it established for what we could do with them [Ashley and Jared] for their education." He also testified that they were "trying to do a dual house thing" and, "We maintained two households." In response to a question from Mr. Peeler, he agreed that the family's "living activities" were taking place in their home in the District as well as in his relatives' home in Gilbert. In addition, at no time did the Jensens attempt to sell their home in the District and establish a permanent home in Gilbert through a purchase or rental.

The evidence shows that the purpose of the Jensens' temporary living arrangement with relatives in Gilbert was solely for school purposes. They were, therefore, never good faith residents of the Gilbert District and were not eligible to utilize the continuation provision of the Open Enrollment Law. Also, the applications were not timely filed according to the deadline in the law, so they did not qualify as regular or "good cause" applications. The District was justified under the law and Departmental rules in denying them.

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

**III.  
DECISION**

For the foregoing reasons, the decision of the Board of Directors of the United Community School District made on November 12, 1998, denying open enrollment for Ashley and Jared Jensen for the 1998-99 school year, is hereby recommended for affirmance. There are no costs of this appeal to be assigned.

May 18, 1999  
DATE

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

IT IS SO ORDERED.

6-3-99  
DATE

Corine Hadley  
CORINE HADLEY, PRESIDENT  
STATE BOARD OF EDUCATION