

**IOWA STATE BOARD  
OF EDUCATION  
(Cite as 17 D.o.E. App. Dec. 324)**

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***In re Kurt & Nichelle Brandt*** :

Phyllis Brandt, :  
Appellant, :

v. : DECISION

Waterloo Community School :  
District, Appellee. : [Adm. Doc. #4090]

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The above-captioned matter was heard on June 2, 1999, before a hearing panel comprising Thomas Andersen, consultant, Bureau of Administration & School Improvement Services; Connie Cannon, consultant, School to Work Office; and Ann Marie Brick, J.D., legal consultant and designated administrative law judge, presiding. Appellant, Phyllis Brandt, was "present" telephonically and was unrepresented by counsel. Appellee, Waterloo Community School District [hereinafter, "the District"], was also "present" telephonically in the person of Bernard Cooper, director of student services. The District was represented by Attorney Steven Weidner of the Swisher & Cohrt Law Firm of Waterloo, 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 before them.

Appellant seeks reversal of two decisions of the Board of Directors [hereinafter, "the Board"] of the District made on January 25, 1999, and February 8, 1999, that denied open enrollment for her children.

**I.  
FINDINGS OF FACT**

Phyllis Brandt, her husband, and their two children are residents of the Waterloo Community School District. At the time of the appeal hearing, Kurt Brandt was 14 years old and entering grade 9 for the 1999-2000 school year. Nichelle Brandt was 16 years old and entering grade 11. The Brandts moved to Waterloo from Creston in late November 1998. Kurt and Nichelle attended the Dunkerton Community School District from December 1, 1998, through the end of the 1998-99 school year.

The Brandts prefer that both of their children attend a small school district, particularly Kurt, who receives special education services. In the summer of 1998, prior to moving to Waterloo, the Brandts visited the Dunkerton District. Mrs. Brandt testified that they were told by the Dunkerton superintendent's secretary that Waterloo must approve open enrollment for Kurt and Nichelle since the family would be moving from one district to a different district. The Brandts did not contact the Waterloo District for information on open enrollment procedures and they did not file open enrollment applications for the 1998-99 school year.

On December 1, 1998, after moving to Waterloo, the Brandts enrolled Kurt and Nichelle in the Dunkerton District. At that time, Richard Wede, the superintendent, told them that they had been misinformed about the need to apply for open enrollment for Kurt and Nichelle. The Brandts paid tuition of \$420 per month for each child to attend the Dunkerton schools from December 1, 1998, through the end of the 1998-99 school year.

In December 1998, the Brandts filed an open enrollment application for Kurt to attend Dunkerton for the 1999-2000 school year. It was received by Waterloo on December 3, 1998. Mrs. Brandt testified that Mr. Wede told them they need not file a similar application for Nichelle since she had attended the 10<sup>th</sup> grade in Dunkerton on a tuition basis and would be automatically enrolled there for the 1999-2000 school year. They did not file an application for Nichelle at that time.

On January 15, 1999, the Brandts were notified by the Waterloo District that the open enrollment application for Kurt would be recommended for denial by the Board. On January 18 and 19, 1999, Mrs. Brandt attempted unsuccessfully to contact Bernard Cooper, the District's director of student services, for information on the Open Enrollment Law and procedures. On January 20, she discussed open enrollment with Jim Tyson, a consultant at the Iowa Department of Education. Based on his suggestion, Mrs. Brandt filed an open enrollment application for Nichelle to attend Dunkerton for the 1999-2000 school year, along with a letter explaining why it was being filed after the January 1 deadline. The application was received by the Waterloo District on January 21, 1999.

The Board met on January 25, 1999, and denied the application for Kurt Brandt because of negative effect on the District's desegregation plan.

The Board met on February 8, 1999, and denied the application for Nichelle Brandt because it was untimely filed.

Bernard Cooper, the District's director of student services, testified for the District concerning the policies and procedures that were applied to the applications for Kurt and Nichelle.

The Waterloo Community School District has an open enrollment/desegregation policy and plan. The Board's policy on open enrollment states:

Maintaining the District's current racial characteristics is critical to its desegregation efforts, ability to comply with state guidelines on minority/nonminority ratios [and] long-term racial and economic stability. Therefore, minority/nonminority student ratios at both the District level and the building level will be primary determinants when making decisions on transfer requests.

(Bd. Policy 501.12, 1993, reviewed 1997.)

The Board's Administrative Regulation 501.12-R details the guidelines that will be followed in approving or denying open enrollment applications. Among those guidelines are the following:

Nonminority students wishing to transfer from the District will be denied approval if they attend a school with a minority enrollment that is five (5) percent greater than the District average.

Another guideline states:

Request for open enrollment transfer out of the District will not be granted if it is found the release of the pupil(s) requesting to do so will adversely affect the district's existing minority/nonminority ratio. Each fall, a composite ratio shall be developed by Student Services based on the numbers of minority and nonminority students enrolled in the District on the official enrollment count.

For the 1998-99 school year the minority enrollment in the District as a whole was 30.6 percent, and the nonminority enrollment was 69.4 percent. Based on these percentages, the District established a ratio of 1:3, meaning that for every minority student who open enrolled out of the District for 1999-2000, three nonminority students would be allowed to open enroll out. The District determined that 17 minority students who applied for open enrollment out of the District for 1999-2000 were eligible

to leave. Applying the 1:3 ration, the District then calculated that 51 nonminority students would be approved to open enroll out.

In addition to the District-wide ratio, the District also considers the percentages of minority and nonminority students in the assigned attendance center of each applicant. Nonminority students may open roll out of the District if the minority enrollment in their assigned attendance center is no more than five (5) percent greater than the District average.

Kurt Brandt, a nonminority, was assigned to attend East High School, with a minority enrollment of 34.8 percent. Since that figure is less than five percent greater than the District average of 30.6 percent, Kurt was considered eligible for open enrollment out of the District. He and the other eligible nonminority applicants were then listed chronologically based on when their applications were received. The District quota of 51 nonminority students, however, was filled before Kurt's name was reached. His application was denied because his departure would adversely affect the District-wide ratio and he was placed on a waiting list.

The District's practice of denying open enrollment applications under its open enrollment/desegregation policy and plan was upheld by Black Hawk District Court Judge Briner in the Decision on Appeal in *Waterloo v. Iowa Department of Education*, Case Nos. LACV075042 and LACV077403, August 8, 1996. The policy and plan are unchanged since this decision was entered by Judge Briner, and the District has been consistent in its application.

Mr. Cooper testified that the open enrollment application for Nichelle Brandt was denied because it was filed after the January 1 deadline established by the Open Enrollment Law. The applications of two additional students were denied by the Board at the same meeting for also being untimely filed.

## II.

### CONCLUSIONS OF LAW

This appeal involves two separate decisions by the Board, both involving its application of the Open Enrollment Law.

The Open Enrollment Law was written to allow parents to maximize educational opportunities for their children. Iowa Code section 282.18(1)(1999). However, in order to take advantage of this opportunity, the Law requires parents to follow certain minimal requirements, including filing the application for open enrollment by January 1 of the preceding school year. Iowa Code section 282.18(2)(1999).

At the time the Open Enrollment Law was written, the legislature recognized that certain events would prevent parents from meeting the January 1 deadline. Therefore, the statute includes an exception for two 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 January 1 deadline. Iowa Code sections 282.18(2), (4), and (16) (1999)

The legislature has defined 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 January 1 deadline. 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 removal of accreditation by the state board, surrender of accreditation, or permanent closure of a nonpublic school, 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.

Iowa Code §282.18(16) (1999).

The Brandts were unaware of the application requirements of the Open Enrollment Law, including the need to file for Nichelle by the January 1 deadline. Indeed, the evidence shows that they were given incorrect information about the law and the required procedures by employees of the Dunkerton District. While this is an explanation for missing the January 1 deadline, it does not constitute "good cause" as defined by the law.

Numerous appeals have been brought to the State Board regarding the definition of "good cause" since the enactment of the Open Enrollment Law. Only a few have merited reversal of the local board's decision to deny late applications. The State Board has previously refused to reverse the denial of an application that was late due to ignorance of the filing deadline, *In re Candy Sue Crane*, 8 D.o.E. App. Dec. 198(1991); 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. 157 (1992); or for missing the deadline because the parent had not received notice of the deadline and did not know it existed, *In re Nathan Vermeer*, 14 D.o.E. App. Dec. 83(1997).

In this case, as in those others, the reasons for not filing the application by the deadline do not meet the "good cause" definition in the Iowa Code. Nor do they constitute a "similar set of circumstances consistent with the definition of good cause." Iowa Code section 282.18(16)(1999). Nor is this case one of such unique proportions that justice and fairness require the State Board to overlook the regular statutory procedures. Iowa Code section 282.18(18)(1999).

The legislature created the January 1 deadline as part of the Open Enrollment Law (Iowa Code section 282.18(2)(1999), and the Law clearly allows the District to deny applications filed after the deadline. The District's practice is to require compliance with the deadline, and it has been consistent in denying late-filed applications.

We see no error in the Board's decision to deny the late-filed open enrollment application for Nichelle. It was consistent with state law and its own practice. There are, therefore, no grounds on which to reverse the decision.

The Board's decision to deny the open enrollment application for Kurt was based on a different provision of the Open Enrollment Law. Iowa Code section 282.18(3)(1999) states:

In all districts involved with voluntary or court-ordered desegregation, minority and nonminority pupil ratios shall be maintained according to the desegregation plan or order. The superintendent of a district subject to voluntary or court-ordered desegregation may deny a request for transfer under this section if the superintendent finds that enrollment or release of a pupil will adversely affect the district's implementation of the desegregation order or plan. If, however, a transfer request would facilitate a voluntary or court-ordered desegregation plan, the district

shall give priority to granting the request over other requests.

Iowa Code section 282.18(12)(1999) states:

The Board of directors of a school district subject to voluntary or court-ordered desegregation shall develop a policy for implementation of open enrollment in the district. The policy shall contain objective criteria for determining when a request would adversely impact the desegregation order or plan and criteria for prioritizing requests that do not have an adverse impact on the order or plan.

As a result, we have a conflict between two important interests: the right of parents to choose the school they believe would be best for their children under the Open Enrollment Law, and the requirement that school districts act affirmatively to eliminate segregated schools. If the Waterloo District did not have an open enrollment/desegregation plan, there is no question that the Brandts could open enroll Kurt, since the application was timely filed. However, the District does have such a plan, adopted in 1973. *Waterloo Community School District v. Iowa Dept. of Education*, Black Hawk County District Court Decision on Appeal, Nos. LACV075042 and LACV077403, August 8, 1996.

The District adopted its current open enrollment/desegregation policy/procedures in 1993 (*Id.*) in conformance with Iowa Code section 282.18(12)(1999). It contains objective criteria for determining when open enrollment transfers would adversely impact the District's desegregation and for prioritizing requests that would not adversely impact the plan. These criteria are detailed in Board Policy 501.12-R. The policy contains criteria for determining how transfers from individual school buildings would be approved or denied. It also contains a composite ratio provision, discussed above in the Findings of Fact, which is a method of determining when open enrollment out of the District would have an adverse impact on the desegregation plan by affecting the District-wide ratio of minority to nonminority students and the procedure for prioritizing transfers deemed not to have an adverse impact. This provision was upheld by the District Court Decision *Waterloo Community School District v. Iowa Dept. of Education*, *supra*.

The State Board of Education has been directed by the legislature to render decisions that are "just and equitable" [Iowa Code section 282.18(18)(1999)], "in the best interest of the affect child or children" [Iowa Code section 282.18(18)(1999)], and

"in the best interest of education" [281 Iowa Administrative Code 6.17(2)]. Based on this mandate, the State Board's Standard of Review is as follows:

A local school board's decision will not be overturned unless it is unreasonable and contrary to the best interest of education.

*In re Jesse Bachman*, 13 D.o.E. App. Dec. 363(1996).

The facts discovered at the appeal hearing do not show that the District's policy was inappropriately or incorrectly applied to the facts of Kurt Brandt's case. Therefore, the Board's decision to deny his application was reasonable. The State Board has previously reached this same conclusion regarding the District's implementation of its open enrollment/desegregation policy. *In re Zachary Sinram, Stephanie Dusenberry and Dale Schultz*, 14 D.o.E. App. Dec. 216(1997).

We take this opportunity to address a significant misconception included in the Appellant's Affidavit of Appeal, which states as follows:

It is my belief that the denial of any open enrollment would in effect deny the parents right to make the desicion [sic] of what public school would be best for their children's education and welfare ... I always believed that in these United States of America every parent had the freedom and right to send their children to whatever school they decided was best for their children and personal situations. And that every child is entitled to a free education.

(Appellant's Affidavit of Appeal, February 16, 1999.)

The Appellant's statement is only partially correct. Every Iowa child is entitled to a tuition-free, public education, but this entitlement is not unrestricted. Iowa law states:

Every school shall be free of tuition to all **actual residents** between the ages of five and twenty-one years ... "resident" means a person who is physically present in a district, whose residence has not been established in another district ... and is in the district for the purpose of making a home and not solely for school purposes.

Iowa Code section 282.6(1999) (emphasis added).

Nonresident children shall be charged the maximum tuition rate as determined in section 282.24.

Iowa Code section 282.1(1999).

Clearly, the Brandt children are entitled to a tuition-free education in the Waterloo Community School District, their district of residence. They are not entitled to a tuition-free education in another district. The Open Enrollment Law makes available additional educational opportunities outside the district of residence. However, as this appeal demonstrated, that law contains restrictions and imposes procedural requirements. The "right" of parents to send their children to whatever school they prefer may be exercised if parents are willing to pay tuition for the privilege.

**III.**  
**DECISION**

For the reasons stated above, the decisions of the Board of Directors of the Waterloo Community School District made on January 25, 1999, and February 8, 1999, denying the open enrollment applications for the Appellant's children, are hereby recommended for affirmance. There are no costs to this appeal to be assigned.

*Nov 1, 1999*

DATE

*Ann Marie Brick*

ANN MARIE BRICK, J.D.  
ADMINISTRATIVE LAW JUDGE

It is so ordered.

*Nov 17, 1999*

DATE

*Corine Hadley*

CORINE HADLEY, PRESIDENT  
STATE BOARD OF EDUCATION