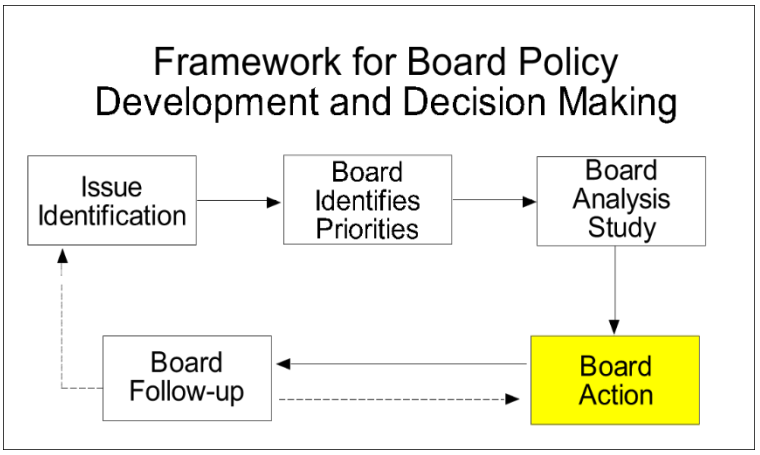
Iowa State Board of Education

Executive Summary

January 28, 2021



Agenda Item: *In re Open Enrollment of R.N. et al. (CAM Community School District)*

State Board Priority: All

State Board Role/Authority: Under Iowa Code sections 282.18(5) and 290.1, the State Board of Education has authority to hear appeals from local school board decisions denying late-filed open enrollment applications due to "serious health condition." Under section 290.1, the Board has authority to hear appeals regarding attendance center assignments.

Presenter(s): Thomas Mayes, General Counsel

Attachment(s): One

Recommendation: It is recommended that the State Board approve the proposed decision.

Background: Appellants seek to attend the Iowa Connections Academy, rather than the remote learning made available by the CAM Community School District. Viewed through an open enrollment lens, Appellants have not shown attendance at Iowa Connections Academy. Viewed through an attendance center assignment lens, Appellants have not shown CAM abused its substantial discretion in making attendance center assignments.

IOWA DEPARTMENT OF EDUCATION

CITE AS ____ D.o.E. App. Dec. ____ (2021)

In re Open Enrollment of F.N. & G.N.,	:	
R.N. & K.N.,	:	**DECISION**
Appellant,	:	
vs.	:	
CAM Community School District,	:	[Admin. Doc. #5121]
Appellee.	:	

R.N. and K.N. ("Appellants"), who are residents of CAM Community School District ("District"), seek to have their children F.N. and G.N. attend the Iowa Connections Academy, a virtual school and an attendance center of the District. The District's board of directors ("school board") denied their request on September 14, 2020, and Appellants filed their affidavit of appeal on the next day. The Iowa Department of Education, Thomas A. Mayes, designated administrative law judge presiding, heard this appeal by video conference on October 26, 2020. Appellants were present and were represented by attorney Frederick Sinkevich. The District was present via Superintendent Paul Croghan and board president Gary Dinkla, and was represented by attorneys Katherine Beenken and Emily Kolbe.

After considering the testimony of the witnesses, the exhibits offered, and the arguments of counsel, the school board's decision is AFFIRMED.

Findings of Fact

One of the two children has a diagnosis of asthma, which places her at risk due to COVID-19 (Exhibit F).[1] Beginning in June 2020, appellants communicated these concerns to the District. In August 2020, Appellants first indicated their desire to enroll the children in the Iowa Connections Academy, believing it to be a "better fit" for their children. The Iowa Connections Academy is a program offered by the District. An entirely online school, it is considered one of the District's buildings, although it is

[1] This Exhibit was admitted solely for the purpose of establishing the child's medical condition.

operated by a private vendor. It accepts open enrollment applications from around the state. On August 10, 2020, Appellants filed open enrollment applications for their children, listing "health" as a reason for filing after the March 1 deadline (Exhibit C).

On August 18, consultants of the Iowa Department of Education advised the District that it was a local decision about whether to treat requests to attend the Iowa Connections Academy as open enrollment or as a within-district transfer (Exhibit 6). The Department further advised that, if open enrollment were used, the statutory deadlines and good cause would apply. The Department cautioned about allowing CAM students to transfer to the Iowa Connections Academy without using the open enrollment process.

On September 14, 2020, the school board denied Appellants' open enrollment requests. After the denial, Appellants addressed the school board during the period of public comment (Exhibit 2). Director Dinkla testified that Appellants filed these appeals on September 15 (Exhibit 4).

The District provides remote learning for children with COVID-19 risk factors. That remote learning is taught by Iowa licensed teachers. Although Appellants assert that the Iowa Connections Academy would provide higher quality learning experience, there is no evidence that the remote learning directly offered by the District fails to meet the requirements which the law imposes. Iowa Connections Academy has the benefit of years of experience; however, the District was quickly able to establish a compliant learning environment taught by appropriately licensed teachers. Although Appellants offered testimony about the respective quality of the District's remote learning and the Iowa Connections Academy, Appellants offered no evidence that enrollment in the Iowa Connection Academy is necessary to address the child's asthma.

The District and school board have a policy on attendance center assignments (Exhibit 5). In pertinent part, it reads: "The board will have complete discretion to determine the boundaries for each attendance center, to assign students to the attendance centers, and to assign students to the classrooms within the attendance center."

Conclusions of Law

This appeal is timely filed, and the undersigned administrative law judge and State Board have jurisdiction of the parties and the subject matter. Iowa Code § 290.1 (2020).

Appellants carry the burden of proving their entitlement to relief. *In D.L.*, 7 D.o.E. App Dec. 286, 288 (1990). "This is a heavy burden, particularly when the challenged decision or action is within a board's power to make…." *Id.* The Board will review the decision on alternative grounds - denial of open enrollment and denial of a student transfer. The degree of review is based on the grounds.

Senate File 2310 contains the following key provisions. Regarding open enrollment, section 12 provides, in relevant part:

> Notwithstanding section 282.18, subsection 2, paragraph "a", for the school year commencing July 1, 2020, a parent or guardian shall have until July 15, 2020, to notify to the district of residence and the receiving district, on forms prescribed by the department of education, that the parent or guardian intends to enroll the parent's or guardian's child in an online public school in another school district, if the child, another resident of the child's residence, or a regular caretaker of the child has a significant health condition that increases the risk of COVID-19.

Section 18, subsection 4, provides the following pertinent provision:

> If a parent or guardian of a student enrolled in a school district or accredited nonpublic school notifies the school district or accredited nonpublic school in writing that the student, another resident of the student's residence, or a regular caretaker of the student has a significant health condition that increases the risk of COVID-19, the school district or accredited nonpublic school shall make reasonable accommodations for the student, on a case-by-case basis, to attend school through remote learning.

Open Enrollment. If this action is viewed as a denial of open enrollment based "serious health condition," the State Board has the following command: "The state board shall exercise broad discretion to achieve just and equitable results that are in the best interest of the affected child or children." Iowa Code § 282.18(5). While broad, this scope of review does not provide the State Board the power or the obligation to substitute its judgment for a local board, or to grant relief when a parent failed to meet its burden of proof. The State Board must be "just," which means following the applicable law.

The Appellants did not timely file under either potential deadline: March 1 or July 15.[2] To establish entitlement for late-filed open enrollment based on a "serious health condition of the student that the resident district *cannot adequately address*," *see id.* (emphasis added), Appellants must show the following six elements.

1. The serious health condition of the child is one that has been diagnosed as such by a licensed physician, osteopathic physician, doctor of chiropractic, licensed

[2] To the extent the Appellants assert they were not adequately advised of the July 15 deadline, we note that the parties are deemed to know the law. *See, e.g.*, *Matter of Duhme's Estate*, 267 N.W.2d 688, 694 (Iowa 1978).

physician assistant, or advanced registered nurse practitioner, and this diagnosis has been provided to the school district.
2. The child's serious health condition[3] is not of a short-term or temporary nature.
3. The district has been provided with the specifics of the child's health needs caused by the serious health condition. From this, the district knows or should know what specific steps its staff can take to meet the health needs of the child.
4. School officials, upon notification of the serious health condition and the steps it could take to meet the child's needs, must have failed to implement the steps or, despite the district's best efforts, its implementation of the steps was unsuccessful.
5. A reasonable person could not have known before March 1[4] that the district could not or would not adequately address the child's health needs.
6. It can be reasonably anticipated that a change in the child's school district will improve the situation.

See, e.g., *In re A.C.*, 24 D.o.E. App. Dec. 5 (2006). The parties appear to agree that Appellants have proven elements one and two. The District disputes the remaining elements. After considering the evidence of record, we conclude that Appellants have not -- and cannot -- meet elements four and six.

The District implemented a program of remote learning, pursuant to Senate File 2310's section 18, that would allow the child with asthma to have completely remote instruction. Between the District's program of remote learning and the Iowa Connections Academy, both are equally able to reduce the child's exposure to other children and adults. Attendance at the Iowa Connections Academy is no better than the District's program of primarily remote learning for addressing the child's risk factors for COVID-19. For that reason, Appellants failed to prove a change is necessary to *improve* the child's situation, "situation" here referring to the child's serious health condition - not the parents' perception of the overall quality of their child's education. Also for that reason, Appellants failed to prove the District failed to take steps to address the child's health-related needs. The District's compliance with Senate File 2310's section 18 satisfied its obligations related to element 4.

Appellants, having failed to prove attendance at the Iowa Connections Academy is necessary because the District cannot adequately address their child's asthma, are not entitled to relief under an "open enrollment" theory.

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[3] Senate File 2310 expands the scope to household members and caretakers. We express no opinion on whether a late-filed open enrollment request for a sibling's serious health condition would qualify, absent the language in Senate File 2310.

[4] We will assume that Senate File 2310 alters this date. Even if that is the case, that does change the outcome.

Attendance Center Assignment. Iowa Code section 279.11(1), provides.

> The board of directors shall determine the number of schools to be taught, divide the corporation into such wards or other divisions for school purposes as may be proper, *determine the particular school which each child shall attend*, and designate the period each school shall be held beyond the time required by law.

(Emphasis added.) Actions under this section are within the sound discretion of the school board and District. For that reason, our review on appeal is limited to whether the District and school board abused the discretion conferred upon it in adopting and applying the policy on attendance center assignments. *See, e.g.*, *Sioux City Cmty. Sch. Dist. v. Iowa Dep't of Educ.*, 659 N.W.2d 564, 569 (Iowa 2003).

> In applying abuse of discretion standards, we look only to whether a reasonable person could have found sufficient evidence to come to the same conclusion as reached by the school district. In so doing, we will find a decision was unreasonable if it was not based upon substantial evidence or was based upon an erroneous application of the law.

Id. (citation omitted). We must not "substitute our judgment for that of the school district." *Id.* Since at least 1978, the State Board has struggled with parent concerns about which schools their children attend within their districts. *See, e.g.*, *Chariton Cmty. Sch. Dist.*, 1 D.P.I. App. Dec. 197, 199 (1978). We will not engage in "mere second guessing" when the school board and District offers a "reasonable justification for" their actions. *Id.* Appellee provided evidence about setting limits on enrollment of its resident students to the Iowa Connections Academy, including the great disruption that would occur if it were not able to set limits, including crucial decisions about staffing. While we may make a different decision under the same facts, that is not our prerogative: we are not elected members of the District's board of directors. Understanding our function being to review the school board's decision for an abuse of discretion, we have done so and find none.

Appellants, having failed to prove the District and its board abused the considerable discretion afforded to it under section 279.11, are not entitled to relief under a school assignment theory.

Additional Arguments. Appellants present two additional arguments. First, they assert they were misled by the District about whether they could open enroll their children to the Iowa Connections Academy. Having reviewed the record, including Exhibits 1 and 2, we cannot find the District clearly stated it would allow the children to enroll in the Iowa Connections Academy. We also note that any conversation about such enrollment

was after the July 15 deadline. This is not a case where the Appellants, relying to their detriment on information from the District, missed a deadline.

Second, Appellants assert they were not allowed to present their argument before the school board voted to deny their application. We take this assertion to be, in essence, an alleged denial of due process. Appellants informed the school board of the basis of their request during the period of public comment. The board heard and considered this information, and it could have reconsidered its prior position. It did not. While a better practice may have been to adjust the agenda, we cannot say the school board denied the Appellants an opportunity to be heard. *See, e.g.*, *Mathews v. Eldridge*, 424 U.S. 319 (1976). Moreover, we cannot say that a different procedure would have compelled a different outcome.

Conclusion

We have considered all issues presented and AFFIRM the September 14, 2020, decision denying Appellants' children the enrollment requested by the Appellants.

No costs.

January 8, 2021

/s/ Electronically Signed
Thomas A. Mayes
Administrative Law Judge

So ORDERED

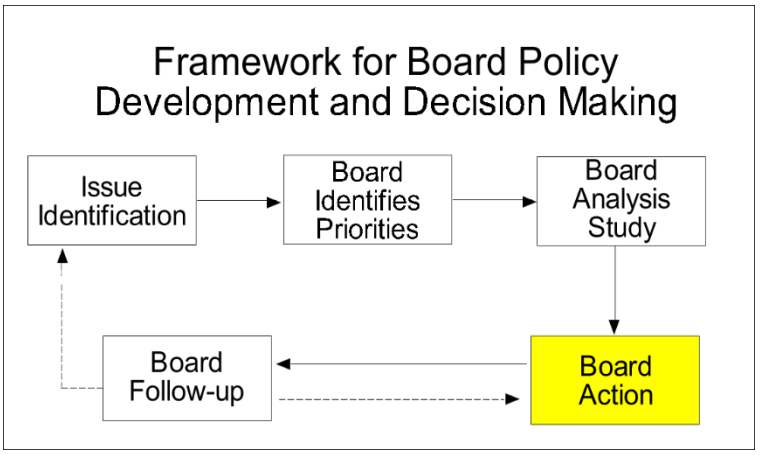
_____
DATE

_____
Brooke Miller Axiotis, President
State Board of Education

Iowa State Board of Education

Executive Summary

January 28, 2021



Agenda Item: *In re Open Enrollment of S.B. et al. (CAM Community School District)*

State Board Priority: All

State Board Role/Authority: Under Iowa Code sections 282.18(5) and 290.1, the State Board of Education has authority to hear appeals from local school board decisions denying late-filed open enrollment applications due to "serious health condition." Under section 290.1, the Board has authority to hear appeals regarding attendance center assignments.

Presenter(s): Thomas Mayes, General Counsel

Attachment(s): One

Recommendation: It is recommended that the State Board approve the proposed decision.

Background: Appellants seek to attend the Iowa Connections Academy, rather than the remote learning made available by the CAM Community School District. Viewed through an open enrollment lens, Appellants have not shown attendance at Iowa Connections Academy. Viewed through an attendance center assignment lens, Appellants have not shown CAM abused its substantial discretion in making attendance center assignments.

IOWA DEPARTMENT OF EDUCATION

In re Open Enrollment of S.B., S.B, & S.B.,	:	
K.B.,	:	
Appellant,	:	**DECISION**
vs.	:	
CAM Community School District,	:	[Admin. Doc. #5123]
Appellee.	:	

K.B. and T.B. ("Appellants"), who are residents of CAM Community School District ("District"), seek to have their children, identified by their initials in the caption, attend the Iowa Connections Academy, a virtual school and an attendance center of the District. The District's board of directors ("school board") denied their request on September 14, 2020, and Appellants filed their affidavit of appeal on that. The Iowa Department of Education, Thomas A. Mayes, designated administrative law judge presiding, heard this appeal by video conference on November 25, 2020. Appellants were present and were represented by attorney Bonnie Heggen. The District was present via Superintendent Paul Croghan and board president Gary Dinkla, and was represented by attorneys Katherine Beenken and Emily Kolbe. Superintendent Croghan testified.

After considering the testimony of the witness, the exhibits offered, and the arguments of counsel, the school board's decision is AFFIRMED.

Findings of Fact

One of the members of the household has an underlying health condition that places the individual at risk for COVID-19 (Exhibit 1-16 through 1-18, Exhibit 4). On August 13, 2020, Appellants filed open enrollment applications to the Iowa Connections Academy for their children, indicating COVID as a reason but not indicating a serious health condition (Exhibit 1). The Iowa Connections Academy is a program offered by the District. An entirely online school, it is considered one of the District's buildings, although it is operated by a private vendor. It accepts open enrollment applications from around the state.

On August 18, consultants of the Iowa Department of Education advised the District that it was a local decision about whether to treat requests to attend the Iowa Connections Academy as open enrollment or as a within-district transfer (Exhibit 6). The Department further advised that, if open enrollment were used, the statutory deadlines and good cause would apply. The Department cautioned about allowing CAM students to transfer to the Iowa Connections Academy without using the open enrollment process.

On September 10, 2020, Appellants e-mailed the members of the school board, indicating their rationale for selecting the Iowa Connections Academy (Exhibit 2).

On September 14, 2020, the school board denied Appellants' open enrollment requests. After the denial, Appellants addressed the school board during the period of public comment (Exhibit 3).

The District provides remote learning for children with COVID-19 risk factors. That remote learning is taught by Iowa licensed teachers. Although Appellants assert that the Iowa Connections Academy would provide higher quality learning experience, there is no evidence that the remote learning directly offered by the District fails to meet the requirements which the law imposes. Iowa Connections Academy has the benefit of years of experience; however, the District was quickly able to establish a compliant learning environment taught by appropriately licensed teachers, even though there are implementation dips associated with ramping up an entirely new online option. It was apparent from Appellants' cross-examination of Superintendent Croghan that they viewed the education provided by the District's program of remote learning to be inferior to that provided by the Iowa Connections Academy, and documents suggested Appellants felt their children were being used as "guinea pigs" in the District's scale-up of primarily remote learning (Exhibit 2), Appellants offered no evidence that enrollment in the Iowa Connection Academy is necessary to address the health condition in the household.

The District and school board have a policy on attendance center assignments (Exhibit 5). In pertinent part, it reads: "The board will have complete discretion to determine the boundaries for each attendance center, to assign students to the attendance centers, and to assign students to the classrooms within the attendance center."

Conclusions of Law

This appeal is timely filed, and the undersigned administrative law judge and State Board have jurisdiction of the parties and the subject matter. Iowa Code § 290.1 (2020).

Appellants carry the burden of proving their entitlement to relief. *In D.L.*, 7 D.o.E. App Dec. 286, 288 (1990). "This is a heavy burden, particularly when the challenged decision

or action is within a board's power to make…." *Id.* The Board will review the decision on alternative grounds - denial of open enrollment and denial of a student transfer. The degree of review is based on the grounds.

Senate File 2310 contains the following key provisions. Regarding open enrollment, section 12 provides, in relevant part:

> Notwithstanding section 282.18, subsection 2, paragraph "a", for the school year commencing July 1, 2020, a parent or guardian shall have until July 15, 2020, to notify to the district of residence and the receiving district, on forms prescribed by the department of education, that the parent or guardian intends to enroll the parent's or guardian's child in an online public school in another school district, if the child, another resident of the child's residence, or a regular caretaker of the child has a significant health condition that increases the risk of COVID-19.

Section 18, subsection 4, provides the following pertinent provision:

> If a parent or guardian of a student enrolled in a school district or accredited nonpublic school notifies the school district or accredited nonpublic school in writing that the student, another resident of the student's residence, or a regular caretaker of the student has a significant health condition that increases the risk of COVID-19, the school district or accredited nonpublic school shall make reasonable accommodations for the student, on a case-by-case basis, to attend school through remote learning.

Open Enrollment. If this action is viewed as a denial of open enrollment based "serious health condition," the State Board has the following command: "The state board shall exercise broad discretion to achieve just and equitable results that are in the best interest of the affected child or children." Iowa Code § 282.18(5). While broad, this scope of review does not provide the State Board the power or the obligation to substitute its judgment for a local board, or to grant relief when a parent failed to meet its burden of proof. The State Board must be "just," which means following the applicable law.

The Appellants did not timely file under either potential deadline: March 1 or July 15. To establish entitlement for late-filed open enrollment based on a "serious health condition of the student that the resident district *cannot adequately address*," *see id.* (emphasis added), Appellants must show the following six elements.

1. The serious health condition of the child is one that has been diagnosed as such by a licensed physician, osteopathic physician, doctor of chiropractic, licensed

physician assistant, or advanced registered nurse practitioner, and this diagnosis has been provided to the school district.
2. The child's serious health condition[1] is not of a short-term or temporary nature.
3. The district has been provided with the specifics of the child's health needs caused by the serious health condition. From this, the district knows or should know what specific steps its staff can take to meet the health needs of the child.
4. School officials, upon notification of the serious health condition and the steps it could take to meet the child's needs, must have failed to implement the steps or, despite the district's best efforts, its implementation of the steps was unsuccessful.
5. A reasonable person could not have known before March 1[2] that the district could not or would not adequately address the child's health needs.
6. It can be reasonably anticipated that a change in the child's school district will improve the situation.

See, e.g., *In re A.C.*, 24 D.o.E. App. Dec. 5 (2006). The parties appear to agree that Appellants have proven elements one and two. The District disputes the remaining elements. After considering the evidence of record, we conclude that Appellants have not -- and cannot -- meet elements four and six.

The District implemented a program of remote learning, pursuant to Senate File 2310's section 18, that would allow the children to have completely remote instruction. Between the District's program of remote learning and the Iowa Connections Academy, both are equally able to reduce the children's exposure to other children and adults. Attendance at the Iowa Connections Academy is no better than the District's program of primarily remote learning for addressing the household member's risk factors for COVID-19. For that reason, Appellants failed to prove a change is necessary to *improve* the household member's situation, "situation" here referring to the household member's serious health condition - not the parents' perception of the overall quality of their children's education. While the Appellants are unhappy that the District's "online learning continues to evolve" (Exhibit 3), it meets the legitimate concerns the Appellants have for their household member. Also for that reason, Appellants failed to prove the District failed to take steps to address the household member's health-related needs. The District's compliance with Senate File 2310's section 18 satisfied its obligations related to element 4.

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[1] Senate File 2310 expands the scope to household members and caretakers. We express no opinion on whether a late-filed open enrollment request for a sibling's serious health condition would qualify, absent the language in Senate File 2310.

[2] We will assume that Senate File 2310 alters this date. Even if that is the case, that does change the outcome.

Appellants, having failed to prove attendance at the Iowa Connections Academy is necessary to protect the health of their household member, are not entitled to relief under an "open enrollment" theory.

Attendance Center Assignment. Iowa Code section 279.11(1), provides.

> The board of directors shall determine the number of schools to be taught, divide the corporation into such wards or other divisions for school purposes as may be proper, *determine the particular school which each child shall attend*, and designate the period each school shall be held beyond the time required by law.

(Emphasis added.) Actions under this section are within the sound discretion of the school board and District. For that reason, our review on appeal is limited to whether the District and school board abused the discretion conferred upon it in adopting and applying the policy on attendance center assignments. *See, e.g.*, *Sioux City Cmty. Sch. Dist. v. Iowa Dep't of Educ.*, 659 N.W.2d 564, 569 (Iowa 2003).

> In applying abuse of discretion standards, we look only to whether a reasonable person could have found sufficient evidence to come to the same conclusion as reached by the school district. In so doing, we will find a decision was unreasonable if it was not based upon substantial evidence or was based upon an erroneous application of the law.

Id. (citation omitted). We must not "substitute our judgment for that of the school district." *Id.* Since at least 1978, the State Board has struggled with parent concerns about which schools their children attend within their districts. *See, e.g.*, *Chariton Cmty. Sch. Dist.*, 1 D.P.I. App. Dec. 197, 199 (1978). We will not engage in "mere second guessing" when the school board and District offers a "reasonable justification for" their actions. *Id.* Appellee provided evidence about setting limits on enrollment of its resident students to the Iowa Connections Academy, including relying on a caution received from content area experts at the Iowa Department of Education (Exhibit 6). Understanding our function being to review the school board's decision for an abuse of discretion, we have done so and find none.

Appellants, having failed to prove the District and its board abused the considerable discretion afforded to it under section 279.11, are not entitled to relief under a school assignment theory.

Additional Arguments. Appellants argue that that families were provided notice about the District's online information in August 2020, well after the extended July 15, 2020, open enrollment deadline. This cannot form the basis of relief. First, Senate File 2310, which established the extended deadline, also established a requirement for each

district to provide remote learning when a member of a student's household has increased risk from COVID-19. Prior to July 15, 2020, the law provided notice that districts were obligated to provide remote learning in all situations, not just in situations of open enrollment. Second, if families were concerned that they did not hear anything about the District's plans prior to July 15, that would counsel in favor of applying by the July 15 extended deadline.

Second, Appellants forcefully assert the school board and the State Board should grant some latitude in defining "good cause" because of the COVID-19 pandemic. The State Board has only such jurisdiction that is granted by the Iowa Code, and the Iowa Code clearly describes what constitutes good cause for late-filed open enrollment requests. Moreover, the legislature acted in the face of COVID-19 by passing Senate File 2310, which extended the timeline for filing for open enrollment due to COVID-19-related reasons. The legislature granted some relief to families such as the Appellants. The State Board is powerless to grant more.

Finally, Appellants' affidavit of appeal lists "harassment" of the Appellants by the District administration as a purported basis of relief. Generously assuming this is a grounds for relief under section 282.18(5) ("harassment of the student"), this matter was not pursued at the hearing and is deemed waived. In any event, a District exercising its appeal rights and following its policies in good faith is, as a matter of law, not "harassment."

Conclusion

We have considered all issues presented and AFFIRM the September 14, 2020, decision denying Appellants' children the enrollment requested by the Appellants.

No costs.

January 8, 2021

/s/ Electronically Signed
Thomas A. Mayes
Administrative Law Judge

So ORDERED

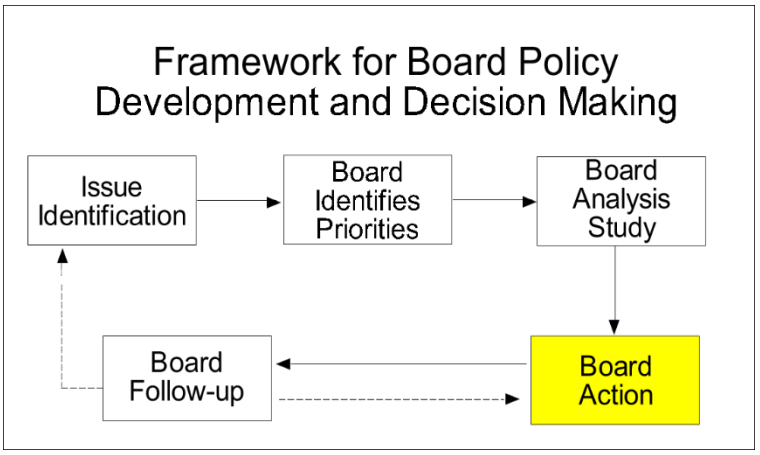
_____
DATE

_____
Brooke Miller Axiotis, President
State Board of Education

Iowa State Board of Education

Executive Summary

January 28, 2021



Agenda Item: *In re Open Enrollment of M.W. et al. (Des Moines Independent Community School District)*

State Board Priority: All

State Board Role/Authority: Under Iowa Code sections 282.18(5) and 290.1, the State Board of Education has authority to hear appeals from local school board decisions denying applications that seek open enrollment due to "repeated acts of harassment of the student that the resident district cannot adequately address."

Presenter(s): Thomas Mayes, General Counsel

Attachment(s): One

Recommendation: It is recommended that the State Board approve the proposed decision finding no jurisdiction to hear this appeal.

Background: The Appellant filed an appeal under Iowa Code sections 282.18(5) and 290.1. Since the allegations concern the District's refusal to comply with requirements of Senate File 2310 and disaster proclamations from the Governor, and do not concern serious health conditions or pervasive harassment, the State Board does not have jurisdiction of these appeals.

IOWA DEPARTMENT OF EDUCATION
_____ D.o.E. App. Dec. _____

In re: Open Enrollment of M.W. and L.W.,	)	
	)	
	)	
Michelle Phillips Wegner,	)	Admin Doc. 5128
	)	
Appellant,	)	
	)	
v.	)	
	)	
DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT,	)	
	)	
	)	**PROPOSED DECISION**
Appellee.	)	

Appellant M.W. filed for open enrollment for A.W., M.W., and L.W. on August 17, 2020. The Des Moines Independent Community School District ("District") granted the application for A.W., who was entering kindergarten (Exhibit C). The District approved A.W.'s application, which was timely filed for an entering kindergarten student (September 1; *see* Iowa Code § 282.18(2)(b) (2020)). The District denied the applications for M.W. and L.W. because they were not filed by March 1 of the preceding year (Exhibits 1, D, and E). The District's school board affirmed the decision on September 15 (Exhibit 4), and Appellant timely appealed. Iowa Code § 290.1. We have jurisdiction of the parties. *Id.*

Appellant asserts that the District's decision to offer completely virtual education in defiance of the provisions of Senate File 2310 and Governor Reynolds's disaster proclamations constitutes "good cause" for a late-filed open enrollment application. In effect, Appellant argues that any district that is out of compliance with state law loses its ability to deny late-filed open enrollment requests. The nature of Appellant's claim is intertwined with our jurisdiction to consider this claim. The State Board has only the jurisdiction conferred on it by the legislature. Prior to July 1, 2003, any open enrollment denial was appealable under section 290.1. In 2003, the legislature limited the State Board's jurisdiction to open enrollment denials "involving repeated acts of harassment of the student or serious health condition of the student that the resident district cannot adequately address." 2003 Iowa Acts, House File 2515 (amending Iowa Code sections 282.18(5) and 290.1). The applications do not list either of these grounds, and Appellant's statement to the District's school board contains a general statement from the American Academy of Pediatrics regarding the relative risks and rewards of online instruction (Exhibits 1 and B) but no medical evidence tied specifically to either of her children.

Appellant points to language in section 282.18, which provides that the open enrollment statute is to be liberally construed. That rule of construction applies only in cases of ambiguity. "We cannot, under the guise of construction, enlarge or otherwise change the terms of a statute as the legislature adopted it." *Marcus v. Young*, 585 N.W.2d 285, 289 (Iowa 1995) (citations omitted). Since the appeals before us do not fit within the plain language of either of the provisions of

section 282.18(5), no amount of liberal construction will repair that jurisdictional defect. The State Board lacks jurisdiction under section 290.1 to hear them.[1]

While the District's actions in defiance of the Iowa Department of Education and Governor Reynolds ought to carry meaningful consequences,[2] this is not one of them. Any recourse the family has under section 282.18 is in state district court. The State Board is powerless to grant the requested relief.[3] The matter is

DISMISSED.

Thomas Mayes
Administrative Law Judge

12/31/2020
Date

Brooke Miller Axiotis, President
State Board of Education

Date

[1] The District argued that Appellant's claims were moot. Given our disposition of this matter on jurisdictional grounds, we need not address mootness.

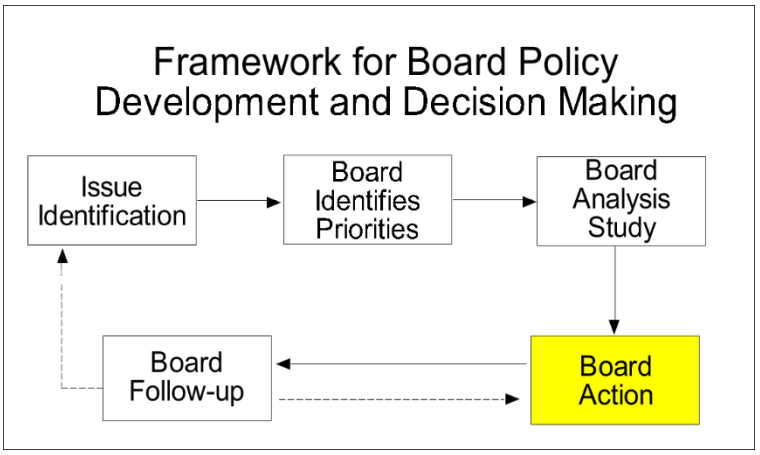
[2] One type of "good cause" for late filing under section 282.18(4) is "a change in the status of a child's resident district." While this matter is not within the State Board's jurisdiction in the present action, we note that this does not appear to be the case. The District is — for the time being — accredited.

[3] The Department's administrative law judge reached a similar conclusion in *In re Open Enrollment of N.H.*, 29 D.o.E. App. Dec. 1 (2018). This decision, however, was not presented to the State Board for its approval. *Cf.* Iowa Code § 256.7(6).

Iowa State Board of Education

Executive Summary

January 28, 2021



Agenda Item: *In re Open Enrollment of A.N. et al. (Iowa City Community School District)*

State Board Priority: All

State Board Role/Authority: Under Iowa Code sections 282.18(5) and 290.1, the State Board of Education has authority to hear appeals from local school board decisions denying applications that seek open enrollment due to "repeated acts of harassment of the student that the resident district cannot adequately address."

Presenter(s): Thomas Mayes, General Counsel

Attachment(s): One

Recommendation: It is recommended that the State Board approve the proposed decision finding no jurisdiction to hear this appeal.

Background: The Appellant filed an appeal under Iowa Code sections 282.18(5) and 290.1. Since the allegations do not concern serious health conditions or pervasive harassment, the State Board does not have jurisdiction of these appeals.

IOWA DEPARTMENT OF EDUCATION
_____ D.o.E. App. Dec. _____

In re: Open Enrollment of A.N., S.N., A.M. And D.M.,	)	
N.M.,	)	Admin Doc. 5132
Appellant,	)	
v.	)	
IOWA CITY COMMUNITY SCHOOL DISTRICT,	)	
Appellee.	)	**PROPOSED DECISION**

N.M. appeals the denial of open enrollment applications for A.N., S.N., A.M., and D.M. by the Iowa City Community District ("District") on October 13, 2020. N.M. timely appealed, and we have jurisdiction of the parties. Iowa Code § 290.1 (2020). We, however, do not have jurisdiction of the subject matter. For that reason, this matter is DISMISSED.

N.M. bases this appeal on the difficulties the District has in implementing remote learning for the four children. The family expressed concern with internet service in their neighborhood, about the number of devices (netbooks, hotspots) the District provided, and with the scheduling and content of remote learning. The District considered the family's concerns and responded with varying degrees of success. The family filed for open enrollment after the March 2020 deadline. None of the applications indicated the request was based on "repeated acts of harassment of the student or [a] serious health condition of the student that the resident district cannot adequately address." Iowa Admin. Code r. 281-17.5. Rather, all applications stated: "Other: Online only doesn't work for our family. Poor internet & 4 kids while working is not feasible" (Exhibit 1). The family wishes to open enroll to Highland Community School District, which is holding classes in-person.

While the concerns expressed by the family may be well-founded, those concerns are beyond the ability of the State Board to address. The State Board has only the jurisdiction conferred on it by the legislature. Prior to July 1, 2003, any open enrollment denial was appealable under section 290.1. In 2003, the legislature limited the State Board's jurisdiction to open enrollment denials "involving repeated acts of harassment of the student or serious health condition of the student that the resident district cannot adequately address." 2003 Iowa Acts, House File 2515 (amending Iowa Code sections 282.18(5) and 290.1). Since the appeals before us do not fit within either of the provisions of section 282.18(5), the State Board lacks jurisdiction under section 290.1 to hear them.

Any recourse the family has is in state district court. The State Board is powerless to grant the requested relief.[1] The matter is

DISMISSED.

Thomas Mayes
Administrative Law Judge

12/31/2020
Date

Brooke Miller Axiotis, President
State Board of Education

Date

[1] The Department's administrative law judge reached a similar conclusion in *In re Open Enrollment of N.H.*, 29 D.o.E. App. Dec. 1 (2018). This decision, however, was not presented to the State Board for its approval. *Cf.* Iowa Code § 256.7(6).

Iowa State Board of Education

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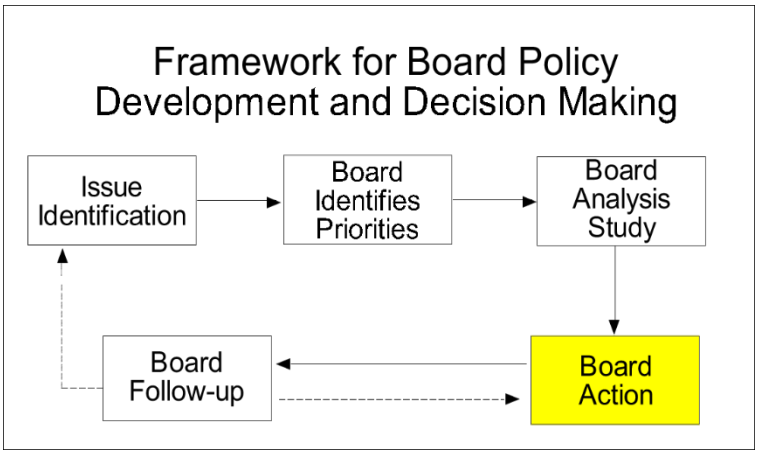

Agenda Item: *In re Educational Placement of M.R. (Waukee Community School District)*

State Board Priority: All

State Board Role/Authority: Under Iowa Code section 290.1, the State Board of Education has authority to hear appeals from local school board decisions.

Presenter(s): Thomas Mayes, General Counsel

Attachment(s): One

Recommendation: It is recommended that the State Board approve the proposed decision, which affirms the District's placement of M.R. in kindergarten.

Background: The Appellants filed an appeal under Iowa Code section 290.1, asserting M.R. should be placed in first grade. The Board's review is for abuse of discretion. The evidence shows the District did not abuse its discretion to place M.R. in kindergarten for the 2020-2021 school year. M.R.'s year in kindergarten in the 2019-2020 school year was in an unaccredited school, and his performance this year does not show he would "profit by first-grade work."

IOWA DEPARTMENT OF EDUCATION
_____ D.o.E. App. Dec. _____

In re: Educational Placement of M.R.,	)	
	)	
	)	
Sowmya Gampa & Sunil Ramshetty,	)	Admin Doc. 5134
	)	
Appellant,	)	
	)	
v.	)	
	)	
WAUKEE COMMUNITY SCHOOL DISTRICT,	)	
	)	**PROPOSED DECISION**
Appellee.	)	

This appeal concerns the grade assignment of M.R. by the appellee Waukee Community School District ("District"). Appellants, the parents of M.R., seek M.R.'s assignment to first grade. The District assigned M.R., who was born after the date specified in Iowa Code for entry into first grade, to a kindergarten classroom. The Waukee Community School District Board of Directors ("school board") affirmed this assignment in a decision dated October 26, 2020. The appellants timely appealed. *See* Iowa Code § 290.1.

A hearing on this appeal was held on November 30, 2020, before Thomas A. Mayes, General Counsel to the Department of Education and designated by the Department to serve as administrative law judge. S.G. and S.R. appeared personally and were not represented by counsel. Dr. Brady Fleming,[1] the District's Associate Superintendent, represented the District, which was not represented by counsel. After considering the testimony of the parties, the exhibits offered, and the arguments of the parties in light of the governing law, we affirm the October 26, 2020, school board decision.

Findings of Fact. We make the following findings of fact by a preponderance of evidence. M.R. was born in December 2014. During the 2019–2020 school year, he attended kindergarten at a Montessori school, which was not accredited by the Iowa Department of Education. The school had not taken the steps necessary to be accredited by the State Board of Education, or sufficient steps to be accredited by an independent accreditation agency. *See generally* Iowa Code § 256.11. The school has since closed, and the District had difficulty obtaining M.R.'s kindergarten records.

When M.R.'s parents enrolled him in the District for the 2020–2021 school year, they disclosed his prior enrollment in kindergarten (Exhibit G, page 1) and the District assigned him to first grade. M.R.'s classroom teacher observed "academic/social concerns" (Exhibit C, page 1).

[1] Using Dr. Fleming's title should not be viewed as diminishing Appellants' academic attainments. Appellants are both members of learned professions; however, their professions and titles are omitted to protect the confidentiality of the child.

Based on these concerns, M.R. was assigned to "Reading Lab," a support for students who need additional instruction and intervention in the components of reading.[2] Additionally, literacy and mathematics screening and assessment data, as well as Reading Lab data, showed M.R. was performing in the aggregate at a kindergarten level, not a first grade level (Exhibit C, page 2). The District decided to place M.R. in kindergarten, and Appellants objected.

The Appellants testified they were concerned about M.R.'s mental health, including the disappointment of no longer being a first grader. Appellants have been providing private instruction to M.R. pending the outcome of this appeal (See, e.g., Exhibit A, page 1). During the hearing, Appellants described the home instruction they provided to M.R., and showed examples of work M.R. has completed. Mr. Fleming testified that M.R. would "do well" if placed in kindergarten.

Conclusions of Law. This appeal is governed by Iowa Code section 282.3, which provides in pertinent part:

> No child shall be admitted to the first grade unless the child is six years of age on or before the fifteenth of September of the current school year; except that a child under six years of age who has been admitted to school work for the year immediately preceding the first grade under conditions approved by the department of education, or who has demonstrated the possession of sufficient ability to profit by first-grade work on the basis of tests or other means of evaluation recommended or approved by the department of education, *may be admitted to first grade* at any time before December 31.

Iowa Code § 282.3(2)(c) (2020) (emphasis added). Because of the emphasized language, especially the use of the word "may", this statute grants discretion to promote children to first grade. *Declaratory Ruling # 40*, 5 D.o.E. App. Dec. 5, at *3 (1986) (citing Iowa Code section 4.1(36)(c), now codified at section 4.1(30)(c)). A decision to promote or retain a child in grade "lie[s] initially within the judgment of the professional education staff." *In re A.G.*, 24 D.o.E. App. Dec. 168, 170 (2007). Since the District has substantial discretion in this matter, our review on appeal is limited to whether the District abused the discretion conferred upon it by section 282.3(2)(c). *See, e.g., Sioux City Cmty. Sch. Dist. v. Iowa Dep't of Educ.*, 659 N.W.2d 564, 569 (Iowa 2003).

> In applying abuse of discretion standards, we look only to whether a reasonable person could have found sufficient evidence to come to the same conclusion as reached by the school district. In so doing, we will find a decision was unreasonable if it was not based upon substantial evidence or was based upon an erroneous application of the law.

Id. (citation omitted). We must not "substitute our judgment for that of the school district." *Id.* While Iowa Code section 290.3 provides that the State Board "shall make such decision as may be just and equitable," that Code language does not provide a basis for overriding a discretionary

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[2] During quite skillful cross-examination by unrepresented appellants, Dr. Fleming conceded that other students with similar Reading Lab scores remained in first grade. He clarified, however, that all such students had completed kindergarten in an accredited school.

decision made by a school district. The State Board's decision must be "just and equitable" and, in doing justice and equity, the Board is bound to give proper respect to the discretion which our legislature has conferred on school districts. The State Board will not disturb local decisions unless they are "unreasonable and contrary to the best interest of education." *In re J.B.*, 13 D.o.E. App. Dec. 363, 369 (1996).

With this standard of review in mind, we turn to the two options available under section 282.3 for promotion to first grade. The first option is unavailable, as a matter of law. The Montessori school was never accredited under any accreditation option available under section 256.11. On the present record, we cannot say that education M.R. received in the 2019–2020 school year was provided "under conditions approved" by the Department.

As to the second option, we conclude the results of assessments and observations support the District's exercise of its discretion. Rather than specific instruments, the Department has given broad approval to assessment instruments and methods, including teacher observation and in-class performance. *Declaratory Ruling # 40*, 5 D.o.E. App. Dec. 5. The instruments and methods the District used to determine M.R.'s readiness for first grade are reasonable, and the District's conclusions drawn from those instruments and methods are reasonable as well. Having so concluded, we are not in a position to second-guess the District's decisions or "substitute our judgment for that of the school district." While we have considered the parent's sincere concern for M.R.'s mental health and self-esteem, we must consider this alongside the clear picture the evidence paints about M.R.'s "ability to profit by first grade work." Iowa Code § 282.3(2)(c). On the present evidentiary record, we cannot conclude the District abused its discretion. *Sioux City Cmty. Sch. Dist.*, 659 N.W.2d at 569. Its decision was not "unreasonable." *In re J.B.*, 13 D.o.E. App. Dec. at 369. It must be AFFIRMED.

Conclusion. We have considered all issues presented, whether or not specifically discussed in this decision. It is recommended that the decision of the Board of Directors of the Waukee Community School District made on October 26, 2020, be affirmed. There are no costs to be assigned.

Thomas Mayes
Administrative Law Judge

12/3/2020
Date

Brooke Miller Axiotis, President
State Board of Education

Date