IOWA DEPARTMENT
OF EDUCATION
(Cite as 22 D.o.E. App. Dec. 182)

In re Bailee Wieden	:	
Brian and Kara Wieden, Appellants,	:	DECISION
vs.	:	
Southeast Polk Community School District, Appellee.	:	[Admin. Doc. 4555]

The above-captioned matter was heard telephonically on November 24 and 25, 2003, before designated administrative law judge Carol J. Greta. The Appellants, Brian and Kara Wieden, were present on behalf of their daughter, Bailee Wieden. The Wiedens were represented by legal counsel, Lillian Lyons Davis of Iowa City, Iowa. Appellee, the Southeast Polk Community School District, was represented by legal counsel, Peter Paschler of Des Moines, Iowa. Also appearing on behalf of the Appellee was Superintendent Thomas Downs.

An evidentiary hearing was held pursuant to agency rules found at 281 Iowa Administrative Code 6. Authority and jurisdiction for the appeal are found in Iowa Code § 290.1. 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 Wiedens seek reversal of a decision of the local board of directors of the District made on September 18, 2003, to deny the Wiedens' request for an intradistrict transfer of Bailee from Four Mile Elementary Building to Willowbrook Elementary Building. They filed a timely appeal to this agency.

I.
FINDINGS OF FACT

Bailee is the daughter of Brian and Kara Wieden, and is in the first grade in the Southeast Polk Community School District [hereinafter "the District" or "SEP"]. She resides with her parents in the Four Mile Elementary attendance area and attends school at Four Mile. Brian has two children from a previous marriage – Miranda and Jameson – who reside with their mother in the Willowbrook Elementary attendance area of the District. Miranda is presently in the fifth grade and Jameson in second grade; both attend Willowbrook.

Prior to the present (2003-04) school year, the Wieden family resided within the boundaries of the Des Moines School District. However, Bailee attended kindergarten, pursuant to Iowa Code section 282.18 (Iowa's open enrollment law), in the Southeast Polk District at the Delaware elementary attendance center because the family was building a house in the District and would move into the house a few months into the 2002-03 school year. Before filing the open enrollment request, Mr. Wieden spoke with former SEP Superintendent Joseph Drips to express his desire that Bailee attend the same building as her half-siblings, Miranda and Jameson. At that point, Miranda and Jameson resided with their mother in the Delaware attendance area of the District. Although the house built by the Wiedens is in the Four Mile attendance area, Bailee was allowed to attend Delaware for the entirety of the 2002-03 school year. As the Appellants point out in their brief, "[h]istorically, the Delaware Elementary School had not experienced as much enrollment pressure as other schools in the district."

The mother of Miranda and Jameson moved during the summer of 2003 within the District from the Delaware attendance area to the Willowbrook attendance area. She informed Mr. Wieden of the impending move on or about June 25, 2003. Upon confirming with SEP officials that his older children would attend the Willowbrook building in 2003-2004, Mr. Wieden immediately took steps to have Bailee's enrollment transferred from Delaware to Willowbrook. When notified by new SEP Superintendent Downs that Willowbrook's enrollment was full, and therefore Bailee could not attend Willowbrook, the Wiedens asked to take the matter to the local school board.

In late July or early August of 2003, without withdrawing their request that Bailee be transferred to Willowbrook, the Wiedens decided to ask that Bailee attend Four Mile, rather than the Delaware attendance center. The District would have allowed Bailee to remain at Delaware, but this transfer request was granted because Four Mile is Bailee's neighborhood school in that it serves the area in which the Wiedens live.

In materials presented to the local board and in this appeal hearing, Mr. Wieden presented information showing that he has joint legal custody of Miranda and Jameson, but the primary physical care of those children is with their mother, to whom Mr. Wieden pays child support. Mr. Wieden's visitation schedule gives him visitation with Miranda and Jameson every other weekend and overnight every Tuesday, as well as at other times when school is not in session. This schedule means that Mr. Wieden is to pick up Miranda and Jameson from school 54 of the 180 days of instruction (30%) and to take them to school 35 days (19% of the time). The mother of Miranda and Jameson, therefore, is responsible for the children's transportation after school 70% of the time and before school 81% of the time. Appellants' Exhibit C.

Mr. Wieden testified at length about the advantages to him, his wife, and the three children of attending the same school building. As one would expect, the convenience of having the three children at one attendance center led to greater

efficiency for Mr. Wieden when he transported the children to and from schools. Both Appellants volunteered as homeroom parents at Delaware and helped on field trips. And, not unexpectedly, the children themselves reportedly enjoyed being in the same building.

In contrast, with Bailee attending a different building than her half-siblings this school year, Mr. Wieden stated that he must "race home" on the afternoons that he picks up Miranda and Jameson in order to be there before Bailee is dropped off by her school bus; that neither he nor his wife can volunteer as much at two attendance centers as they had when the children were all at one building; and that the children have all expressed the desire to be together again at the same school building.

Former Grant Wood Area Education Agency employee Florence Stockman, a Licensed Independent Social Worker, testified on behalf of the Wiedens regarding – in general – how schools and parents can work together to overcome certain disadvantages of divorce. Ms. Stockman testified that children with half-siblings need commonalities, consistency, and predictability, and that being in the same school building can help these children figure out "where they fit" in their families. She admitted that how divorce is handled by the family is also a factor, but was clear in her opinion that keeping half-siblings together in school is in the best interests of these children. However, Ms. Stockman met the Appellants ten minutes prior to this hearing, and has never met any of the children. She, therefore, did not testify specifically regarding the effect(s) on Bailee of being in a different school building from her half-siblings.

There are seven elementary buildings in the District. Excluding the buildings in the outlying rural communities of Runnells and Mitchellville, five are within the greater metropolitan area comprised of the cities of Altoona and Pleasant Hill. Four Mile Elementary is in Pleasant Hill; the other four elementary buildings, including Delaware and Willowbrook, are in Altoona.[1] Appellee's Exhibit 13.

Superintendent Downs stated that the District's standard for elementary grade class size is 23, and that having more than 23 students in an elementary classroom raises concerns about the quality of education. However, because of lack of space, SEP does not have a rule that imposes an absolute cap on classroom enrollment. In fact, Appellee's Exhibit 6 shows that, of the 16 first grade classrooms in the District's seven elementary attendance centers, only two had no more than 23 students enrolled as of August 13, 2003. In discovery documents, SEP disclosed that the enrollment figures for the sections of first grade at Four Mile and Willowbrook were virtually identical as of the second week of September 2003. The three sections of first grade at Four Mile had enrollments of 24, 24, and 25; the three sections of first grade at Willowbrook were at

[1] It is difficult to determine whether Four Mile and Delaware are actually within the corporate limits of either city. However, for purposes of this appeal, it is fair to note that Pleasant Hill and Altoona, respectively, are the cities to which the buildings are closer.

24, 24, and 23. (Appellee's Exhibit 6 lists all six of these sections as having 24 students when that document was prepared on August 13, 2003.)

Former Superintendent Drips periodically communicated to local board members through a newsletter entitled, "Drips & Drops." In the September 2000 newsletter, Dr. Drips wrote that parental requests to transfer from one elementary building to another within the District usually involve "day care, babysitters, previous placement, etc." He noted that these requests have "always been allowed when they did not negatively impact the efficient operation of the building or district." In another part of that same communication to the board, Dr. Drips wrote that parental requests for transfer "are honored when they are in the best interest of the student and the school district. When that is not true, they are denied." Appellants' Exhibit K; Appellee's Exhibit 9.

The District's evidence included a document from the City of Altoona (Appellee's Exhibit 12) tracking the number of building permits issued for single family dwellings from 1984 to 2002. There was a dramatic rise in the number of such building permits issued in 2002, with a total of 193 issued. The average for the eight years prior to 2002 was 109 permits issued per year for single-family dwellings. These numbers say nothing about the number of elementary-aged children who could be expected to inhabit the residences to be built. However, the document does demonstrate that residential building is on the rise in Altoona, a point not disputed by the Appellants.

Areas of growth within SEP are not uniform. The District, therefore, involuntarily transferred 31 elementary students within its seven elementary buildings before the beginning of the current school year. None of these students are in the first grade. Appellee's Exhibit 6. In making *involuntary transfers*, the District follows a "set sequence of decisions," to-wit:

> "(1) Open enrollment students are moved first. (2) Students new to the district are the second set to be moved. (3) Resident students within district transportation capabilities are transferred as a last resort. Two additional rules are applied: First, we do not separate siblings, unless at parental request; and second, students will not, at district direction, be transferred to another building assignment more than once during their K-6 experience."

Appellants' Exhibit K; Appellee's Exhibit 9.

Superintendent Downs testified that the language quoted immediately above is applicable only to transfers of students initiated by the District. On the other hand, the criteria that apply to transfers of students initiated by the parents of students are listed in local board policy 501.5, discussed *infra*. Superintendent Downs agreed that, in the past, parental requests for transfers of their children were readily granted. However, he stated that increased student population stresses on three elementary buildings in particular – Willowbrook, Centennial, and Altoona – led to his decision to halt this

practice. Therefore, at the start of his administration, Superintendent Downs told all building principals that he was imposing a moratorium on all parental requests for intradistrict transfers. No formal Board action memorialized this decision, and no notice of the moratorium was published to SEP residents. From information gathered from his building principals, Superintendent Downs estimates that 32 – 39 requests were received from parents to transfer their children from one elementary building to another within the District prior to the start of this school year, and that all of these requests were denied.

Pursuant to the moratorium on parent-initiated intradistrict transfers, the specific request of Mr. and Mrs. Wieden to have Bailee transferred to Willowbrook was first denied at the building principal level. When the Wiedens pursued the matter with Superintendent Downs, he wrote in a memorandum to his Board members that his denial of that transfer "is based solely on the enrollment at Willowbrook. There is not space available in 1st grade to permit Bailee to 'transfer in' to Willowbrook. Furthermore, six Willowbrook 'neighborhood' students were transferred out of Willowbrook due to enrollment increase and lack of space." Appellee's Exhibit 6. At this hearing, Superintendent Downs added that the fact that Bailee has a different primary residence than that of her half-siblings, Miranda and Jameson, was another reason why her request for transfer was denied.

II.
CONCLUSIONS OF LAW

The Iowa Legislature has directed that the State Board, in regard to appeals to this body, make decisions that are "just and equitable." Iowa Code § 290.3. The administrative rules adopted by the State Board for appeals before it also state that the "decision shall be based on the laws of the United States, the state of Iowa and the regulations and policies of the department of education and shall be in the best interest of education." 281—IAC 6.17(2). Therefore, the standard of review as first articulated in *In re Jesse Bachman*, 13 D.o.E. App. Dec. 363 (1996), requires that a local board decision not be overturned by the State Board unless the local decision is "unreasonable and contrary to the best interest of education."[2] *Id*. at 369.

[2] The District notes in its brief that it believes that the proper standard of review should be more narrow. The District correctly points out that the standard of review articulated by the Iowa Supreme Court in *Sioux City Community School District v. Iowa Department of Education*, 659 N.W.2d 563 (Iowa 2003) is one of abuse of discretion. "Neither we nor the Department may substitute our judgment for that of the school district." *Id.* at 569. We also note that the *Sioux City* case did not involve a section 290.1 appeal, but a transportation appeal brought under Iowa Code section 285.12. Therefore, we do not find it necessary to address this argument for the disposition of this case.

This case is governed by Iowa Code section 279.11, which states as follows:

> The [local] board of directors shall determine the number of schools to be taught [and] … determine the particular school which each child shall attend… .

In response to and consistent with this directive of the General Assembly, the local Board passed two District policies. They are as follows:

> **No. 501.5 – ATTENDANCE CENTER ASSIGNMENT**
> The board shall 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.
> It shall be the responsibility of the superintendent to make a recommendation to the board annually regarding the assigned attendance center for each student. In making the recommendation, the superintendent shall consider the geographical conditions of the school district, the condition and location of the school district facilities, and location of student population, possible transportation difficulties, the financial condition of the school district and other factors deemed relevant by the superintendent or the board.
>
> **No. 606.2 – CLASS SIZE – CLASS GROUPING**
> It shall be within the sole discretion of the board to determine the size of classes and to determine whether class grouping shall take place. The board shall review the class sizes annually.
> It shall be the responsibility of the superintendent to make a recommendation to the board on class size based upon the financial condition of the school district, the qualifications of and number of licensed employees, and other factors deemed relevant to the board.

The Wiedens do not argue that either section 279.11 or the local policies are unreasonable *per se*. Rather, they propose that the local Board applied the pertinent law and policies unlawfully. Specifically, the Wiedens' arguments are that the District violated its own policies; that the local Board abused its discretion; and that the local Board violated the Wiedens' rights to equal protection and due process.

Whether the District Board violated its transfer policies

The Wiedens point to a statement made by former Superintendent Drips in one of his newsletters ("Drips & Drops") to local Board members as proof that the District has bound itself by policy to keep siblings together. It is not disputed that Dr. Drips wrote, "[W]e do not separate siblings, unless at parental request… ." Appellants' Exhibit K; Appellee's Exhibit 9. The Wiedens characterize this statement as "District policy," and argue that current Superintendent Downs and the local Board violated this policy by separating Bailee from her half-siblings.

Iowa Code section 279.11 empowers local school boards, not school administrators, to "determine the particular school which each child shall attend." Neither Dr. Drips' statements nor Superintendent Downs' recommendations to Board members constitute policy that binds the District. Policy number 501.5 (Attendance Center Assignment) contains several factors for the superintendent to weigh in making a recommendation regarding attendance center assignments of students to the local Board. These factors are as follows:

- Geographical conditions of the district
- Condition and location of district facilities
- Location of student population (which Superintendent Downs clarified in his testimony to mean "where the student lives")
- Possible transportation difficulties
- Financial condition of the district
- Other factors deemed relevant by the superintendent or board

The list of factors may not change; however, the factors themselves are not static. That is, the geographical conditions of the district may change; the condition of district facilities may decline or improve; where children reside changes; the district's financial condition is not the same from year-to-year, etc. As the conditions within these factors change, the recommendations of the District's administrators will quite naturally reflect such changes. The resulting recommendations, however, do not constitute "policy," "rule," or "regulations." Accordingly, it cannot be said that the District has violated any policy, rule, or regulation.

Whether the District abused its discretion in refusing the request for Bailee's transfer

The "abuse of discretion" standard means that neither we nor any court may substitute our judgment for that of the underlying decision-maker absent a showing that the local Board's decision was "unreasonable and lacked rationality."[3] *Sioux City Community School District v. Iowa Department of Education*, 659 N.W.2d 563, 571 (Iowa 2003). In that case, the Iowa Supreme Court further explained that, just because rational people can disagree about a decision, an appellate body does not have the authority to override the original decision and replace it with one that it finds more palatable. The local Board must have either erroneously applied the relevant law or failed to base its decision upon substantial evidence.

A key position of the Wiedens is that keeping siblings together is a factor that should be deemed relevant by the superintendent or board. The District counters that it makes more sense for residence of the child to be used as the basis for transfer decisions. We agree, and we conclude that the District did not abuse its discretion.

Because Miranda and Jameson share only the same father as Bailee, this decision refers to them as half-siblings for the sake of ancestral accuracy. However, we accept, *arguendo*, that "siblings" is commonly defined as "two or more persons having one or more parents in common"[4] because the semantics are completely non-determinative of this decision. The fact remains that these "siblings" reside in different primary households. In fact, at the time of this hearing the Wiedens were expecting their second child – a child who will be Bailee's sibling and a stepsibling to Miranda and Jameson. Miranda and Jameson reside with their mother, stepfather, and the child of that union, their other half-sibling. One could reasonably anticipate that the Wiedens would have expected the District to keep Bailee and her new sibling in the same attendance building, were Bailee young enough for this to be possible. This expectation is quite reasonable. It is rational and not contrary to section 279.11 for a district to use residence as a factor for student assignment decisions.

The decision that Bailee would no longer attend the same elementary attendance center as her half-siblings does not fall solely on the shoulders of the District. The harsh reality of divorce is that families are rent, while new relationships are created. To the credit of the Wiedens, they give every appearance of dedication to maintaining an active and vital relationship with Miranda and Jameson, and to have Bailee be an integral part

[3] The Appellants' argument of abuse of discretion is not presumed by this Board to be an argument that this is the correct standard of review in this case. Rather, we presume the argument to be that even pursuant to an abuse of discretion standard, which is a tougher standard for an appellant to meet than the standard first announced in the *Bachman* case, the local Board's decision should be reversed.

[4] This definition is used in both the Third Edition of the American Heritage College Dictionary and the Second College Edition of Webster's New World Dictionary.

of that relationship. However, it is the choices made by the parents of these children – and not the decision of the SEP Board – that have resulted in Bailee missing out on many common experiences with Miranda and Jameson.

The Wiedens cite two key dissolution of marriage appellate decisions[5] in support of their contention that this Board should also be guided by what is in Bailee's best interests. These cases hold that a court should separate siblings and half-siblings in dissolution actions only for compelling reasons. However, this general proposition can be overcome. The appellate court in Iowa found reason to do so, therefore separating half-siblings, in the cases of *Northland v. Starr*, 581 N.W.2d 210, 213 (Iowa App. 1998), *Yarolem v. Ledford*, 529 N.W.2d 297, 298 (Iowa App. 1994), and *In re Marriage of Brauer*, 511 N.W.2d 645, 647 (Iowa App. 1993). Furthermore, there is a vast difference between a decision about the custody of a child following the break-up of the family unit (wherein it is well-settled that the polestar of such decisions is the best interest of the child) and decisions about where that child shall attend school. The standard of review for the latter is whether the decision is reasonable and not contrary to the best interest of education. *In re Jesse Bachman, supra*.

The Wiedens also rely upon Iowa Code section 282.18(3), as amended by the General Assembly in 2002, as support for their position that siblings are not to be separated. That subsection prohibits districts from denying open enrollment transfers if the request is made by a pupil "whose sibling is already participating in open enrollment to another district." Neither the statute nor present open enrollment rules (found in 281—IAC chapter 17) define sibling. This argument merely begs the same question posed here; that is, what is the significance of a familial relationship when one or more of the children in question reside in different households?

The Wiedens also argue that the District cannot claim that concerns about over-crowding are a rational basis for its refusal to grant intradistrict transfers because the District accepts open enrolled students from other districts. Superintendent Downs conceded that SEP accepts open enrolled students. However, other than Appellee's Exhibit 11, which shows that the District gained a net of 85.8 students from open enrollment (1.8% of SEP's total enrollment), no evidence was introduced regarding the grade levels of these students or the attendance centers to which they were assigned.

Finally, it is notable that after the next school year Miranda will be in the seventh grade; her placement will be in the District's junior high school building. Given the differences in their ages of five grade levels, Bailee and Miranda will never be in grades that are in the same attendance center, just as Bailee and the Wiedens' newborn baby will most likely never be in the same attendance center due to the difference in their ages. Furthermore, there are no guarantees that Miranda and Jameson's mother and

[5] These cases are *In re Marriage of Orte*, 389 N.W.2d 373 (Iowa 1986) and *In re Marriage of Quirk-Edwards*, 509 N.W.2d 476 (Iowa 1993).

stepfather will remain in their present residence. They may move to another location within the District or move out of the District entirely.

Superintendent Downs testified that district-initiated transfers are made for the duration of a student's elementary career. That is, a student would not be transferred by the District for just one year. Bailee, a first grader, is in her second attendance center at SEP in as many years, with this request pending for another change. But the point is not whether the transfer request is good or bad for Bailee; the point is that the request is based on parental convenience and other personal family factors outside the control of the District, whose Board must make decisions based on the best interests of education. As the decision-maker for all of the children in its District, the Board did not abuse its discretion by refusing to transfer Bailee to a non-neighborhood school, a school already so crowded that six children had to be involuntarily transferred out of the building. Appellee's Exhibit 6.

Whether the District violated any process due to the Wiedens

Before it can be said that any process is due, there must be a life, liberty, or property interest at stake. The Wiedens claim that they have a property interest at stake, which they characterize as the right "to make parental requests." Appellants' Brief, unnumbered ninth page. They concede that no such right exists in statute, but claim that it is an entitlement created and given to them by the District in that the District allows parents to ask for intradistrict transfers of their children. The Wiedens conclude this argument by stating that the property interest created by the District was taken from them without notice and hearing.

It is not necessary for this Board to determine whether the right "to make parental requests" is truly a property interest because the Wiedens were not deprived of this "right." Indeed, they exercised the same. When their request was denied by the Superintendent, the Wiedens appeared before the local Board and received a full hearing from that governing body. Without deciding whether any process was due to the Wiedens, we conclude that no deprivation of any right occurred regarding their request to transfer Bailee.

Nor is there – or ever has been – any right or entitlement, either by statute or creation of the District, to insist on a specific attendance center. "We know of no authority that says a student's desire to be educated in a certain school district rises to the level of a right protected by due process. Rather, a student has a due process right to an adequate education." *Exira Community School District v. State*, 512 N.W.2d 787, 796 (Iowa 1994). The *Exira* case involved an unsuccessful challenge to Iowa's open enrollment law, section 282.18. However, it is reasonable to also conclude that a desire to be educated in a certain school building is not protected by due process.

Whether the District violated any equal protection due to Bailee

An equal protection claim is grounded in the Fourteenth Amendment to the federal Constitution, which states in pertinent part that "[n]o state shall …deny to any person within its jurisdiction the equal protection of the laws." This promise "must co-exist with the practical necessity that most legislation classifies for one purpose or another, with resulting disadvantage to various groups or persons." *Romer v. Evans*, 517 U.S. 620, 116 S.Ct. 1620, 1627 (1996). Without deciding whether Bailee was truly disadvantaged by the District's decision, we simply note that being disadvantaged is not sufficient to prevail on an equal protection claim. The Wiedens must also show that a person or group of persons similarly situated to Bailee were not also disadvantaged, but that they "enjoy some benefit or right denied" to Bailee. *Van Baale v. City of Des Moines*, 550 N.W.2d 153, 157 (Iowa 1996).

Although the Wiedens claim that Miranda and Jameson are similarly situated to Bailee, the real identification of any such group of persons is dependent on the answer to the Wiedens' Interrogatory No. 20, as amended by order of the undersigned A.L.J. to read as follows:

> **Interrogatory No. 20:** [P]lease provide the names and addresses of each child whose first year of attendance at Willowbrook is the 2003-2004 school year, and who was originally assigned a different attendance center by the District… .

This Interrogatory was answered by SEP as follows:

> **ANSWER:** There are no students in this category.

That is, no student has been transferred to Willowbrook from another attendance center within the District this school year, either by the District (involuntarily) or by parental request. The District told the Wiedens that Willowbrook was at maximum capacity, and the District has been consistent in not opening enrollment at Willowbrook to anyone but students who reside in its attendance area.

The equal protection argument continues to fail, even if the similarly situated group is expanded to mean all children in SEP who live in what the Appellants term "nontraditional families." It is important to note that it has not been argued in this regard that Iowa Code section 279.11 is discriminatory on its face. Rather, the Wiedens claim that the law was applied by the SEP Board in a discriminatory manner against Bailee because she is a member of a nontraditional family. The Wiedens admit that such children are not members of a suspect class. They also admit that there is no fundamental right at stake of a parent to choose his child's attendance center.

The absence of a suspect classification or fundamental right does not mean that the Wiedens cannot urge an equal protection argument. The equal protection clause protects all citizens from "arbitrary or irrational state [governmental] action." *Batra v. Boards of Regents of University of Nebraska*, 79 F.3d 717, 721 (8th Cir. 1996). This protection, however, "goes no further than to prohibit invidious discrimination." *Becker v. Board of Education of Benton County*, 258 Iowa 277, 138 N.W.2d 909, 912 (1965). In

the absence of Bailee belonging to a suspect class with no right to attend the school of her family's choice, the Wiedens face the difficult task of showing that the SEP Board lacked a rational basis for its denial of the request to transfer Bailee from Four Mile to Willowbrook. *See, e.g., DeShon v. Bettendorf Community School District*, 284 N.W.2d 329, 333 (Iowa 1979).

Superintendent Downs' decision to institute a moratorium on all intradistrict transfers was necessitated by changing conditions within the District, specifically the population stresses in three elementary attendance areas, including Willowbrook. He and the SEP Board determined that a rational basis for making building assignments pursuant to section 279.11 and Board Policy 501.5 was to use the primary residence of each child. In addition to Bailee and her family, the families of 32 – 39 students (those who requested intradistrict transfers) were impacted in a disadvantageous way. But this is permitted by section 279.11. When the General Assembly bestowed sole discretion to make student attendance center assignments on local boards of education, it presumably did so with the knowledge that not every local decision would be popular with the affected pupils and their families. However, short of making these decisions in an irrational or arbitrary manner, the local board decisions stand.

The Wiedens acknowledge that the District has applied a "blanket refusal" to all intradistrict transfer requests. They have not and cannot demonstrate a single example of a student who was granted an intradistrict transfer to an attendance center that was not the student's neighborhood school, regardless of the reason for requesting the transfer. Furthermore, they have not demonstrated that the use of residence is an irrational basis on which the District makes assignment and transfer decisions.

III.
DECISION

For the foregoing reasons, it is recommended that the decision of the Board of Directors of the Southeast Polk Community School District made on September 18, 2003, denying the intradistrict transfer application made on behalf of Bailee Wieden, be AFFIRMED. There are no costs of this appeal to be assigned.

_____ _____

Date Carol J. Greta, J.D.
Administrative Law Judge

It is so ordered.

_____ _____

Date Sally Frudden, President Protem
State Board of Education