

**STATE BOARD
Of EDUCATION
(Cite as 21 D.o.E. App. Dec. 165)**

<i>In re Kyle Turner</i>	:	
Jerry Turner, Appellant,	:	
v.	:	DECISION
Southeast Polk Community School District, Appellee	:	[Adm. Doc. #4508]

The above-captioned matter was heard telephonically on August 13, 2002, before designated administrative law judge Susan E. Anderson, J.D. Appellant, Ms. Jerry Turner, was present and was unrepresented by counsel. Appellee, Southeast Polk Community School District [hereinafter, “the District”], was present telephonically in the persons of Joseph Drips, superintendent; Connie Hewitt, director of special services for grades 7 through 12; and Stephen Miller, director of programs and human resources. The District was represented by Attorney Danielle Jess, of Ahlers Cooney Dorweiler Haynie Smith & Allbee, P.C, of Des Moines, Iowa.

An evidentiary hearing was held pursuant to departmental rules found at 281 Iowa Administrative Code 6. Authority and jurisdiction for the appeal are found in Iowa Code sections 282.18 and 290.1(2001). 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.

Appellant seeks reversal of a decision of the Board of Directors [hereinafter, “the Board”] of the District made on June 20, 2002, which denied, as a receiving district, her open enrollment application for her grandson, Kyle Turner, due to insufficient classroom space in the District’s high school special education program.

**I.
FINDINGS OF FACT**

Appellant and her grandson, Kyle, reside in the Des Moines Independent Community School District. At the time of the appeal hearing, Kyle was sixteen years old and would be attending eleventh grade in the 2002-2003 school year. Kyle has a level III IEP (Individualized Education Plan) for special education and takes medication for Attention Deficit Hyperactivity Disorder (ADHD) and depression.

Sometime in May 2002, during the last semester of Kyle's tenth -grade year at Des Moines East High School, Kyle's grandmother decided to explore open enrollment for Kyle into another district for the following reasons. Kyle had been in an altercation with another East High School student as a sophomore in the fall of 2001, which resulted in court placement of Kyle into the STAYS program, a juvenile therapeutic day hospital program, at Mercy Franklin in Des Moines. Kyle attended school at the STAYS program for the rest of his sophomore year. Kyle was not expelled from East High School, although he may have been suspended. The plan was to transition him back to East High School sometime during the fall of 2002, depending upon Kyle's progress. Ms. Turner believed that it would be better to open enroll Kyle to the Southeast Polk District so that he could be separated from the other East High School student with whom he had had the altercation. Ms. Turner also has another grandson, Kyle's half-brother, who attends high school in the Southeast Polk District, but who does not reside with Ms. Turner.

On May 7, 2002, Ms. Turner filed an open enrollment application for Kyle, listing the Southeast Polk District as the requested receiving district, starting in the 2002-2003 school year. She marked the "special education program" box on the open enrollment application. The Des Moines District approved Kyle's open enrollment as the sending district on May 21, 2002, and immediately sent the application to Southeast Polk for action as the receiving district.

Southeast Polk received the application on June 14, 2002. Connie Hewitt, the Southeast Polk District's director of special services for grades 7 through 12, then telephoned Donna Wetter, Dean of Students for Hospital Homebound Programs at Mercy Franklin. Ms. Wetter said that Kyle's psychologist in the STAYS program recommended a highly structured academic environment for Kyle, with a lot of support and not much stimulation. The Southeast Polk District Board denied the open enrollment application on the basis that it had insufficient classroom space in its high school special education program. On July 19, 2002, Ms. Turner appealed the Southeast Polk District's denial of her open enrollment application.

The District's written policies on open enrollment as a receiving district provide, in pertinent part:

Classroom space shall be determined on a case-by-case basis. In making its determination whether sufficient classroom space exists, the board may consider several factors, including but not limited to, the nature of the education program, the grade level, the available licensed employees, the instructional method, the physical space, pupil-teacher ratios, equipment and materials, facilities either being planned or under construction, facilities planned to be closed, financial condition of the school district and projected to be

available [sic], a sharing agreement in force or planned, a bargaining agreement in force, laws or rules governing special education class size, board-adopted school district goals and objectives, and other factors considered relevant by the board.

(“Classroom Space,” Code No. 606.9.)

...Open enrollment requests into the school district will not be approved if insufficient classroom space exists. Open enrollment requests into the school district will also not be approved for students who have been suspended or expelled by the administration or the board of the school district the student is or was attending until the student has been reinstated into the school district from which the student was suspended or expelled. Once the student is reinstated, the student’s open enrollment request will be considered in the same manner as other open enrollment requests provided the required timelines are met.

Open enrollment requests into the school district that, if denied, would result in students from the same nuclear family being enrolled in different school districts, will be given highest priority. The Board, in its discretion, may waive the insufficient classroom space reason for denial for students of the same nuclear family to prevent the division of a nuclear family between two school districts. Other open enrollment requests into the school district shall be considered in the order received by the school district with the first open enrollment request given a higher priority than the second open enrollment request and so forth.

...

An open enrollment request into the school district from parents of a special education student shall be reviewed on a case-by-case basis. The determining factors for approval of such an open enrollment request will be whether the special education program available in the school district is appropriate for the student’s needs and whether the enrollment of the special education student will cause the class size to exceed the maximum allowed. The area education agency director of special education serving the school district shall determine whether the program is appropriate. The special education student shall remain in the sending district until the final determination is made.

(“Open Enrollment Transfers—Procedures as a Receiving District,” Code No. 501.16, pp. 1-2.)

C. Services Provided

...

Level III: A level of service that provides specially designed instruction for most or all of the educational program. This level of service includes substantial modification of instructional techniques, strategies, and materials.

Part II: Special Education Teacher Caseload

The term “caseload” refers to the total number of students serviced by a special education teacher. The appropriate number of students for an individual teacher is ultimately determined by considering whether the teacher is able to fully implement the IEP’s of all students for whom the teacher has instructional responsibility.

CASELOAD NUMBERS

Points are assigned to students as follows:

- Level I IEP 1 point
- Level II IEP 2 points
- Level III IEP 3 points

- A special education teacher’s caseload should be in a range of 15-25 points.
- Classroom associates will be assigned to support individual teachers depending upon student needs.

...

(Southeast Polk District’s “Instructional Services Delivery System,” p. 7-8.)

Ms. Hewitt and Stephen Miller testified that Level III at the District’s high school is already seriously overflowing for the 2002-2003 school year and that the District was still trying to determine how to provide sufficient special education services to its current resident students, particularly Level III students. Specifically, the District has one teacher for 18 Level III students; 4 teachers for 58 Level II students; and 7 teachers for 116 Level I students. Applying the District’s special education teacher caseload range of 15 to 25 points, the District’s only Level III teacher has a 54-point caseload; the 4 Level II teachers have an average of a 29-point caseload; and the 7 Level I teachers have an average of about a 16.5- point caseload.

II. CONCLUSIONS OF LAW

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)(2001)], "in the best interest of the affected child or children" [Iowa Code section 282.18(18) (2001)], 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).

Iowa Code section 282.18(2)(2001) provides that a receiving district must enroll an open enrolled student "unless the receiving district does not have classroom space for the pupil." *Id.* Similarly, an Iowa Department of Education rule provides: "No receiving district shall be required to accept an open enrollment transfer request if it has insufficient classroom space to accommodate the pupil(s)." 281 IAC 17.6(2). The rationale behind this statute and rule is that a District's first obligation is to its resident pupils. *In re Brie Hodges*, 15 D.o.E. App. Dec. 1 (1997); *In re Abigail Anne Legg*, 15 D.o.E. App. Dec. 200 (1998); *In re Ji Yoon Jeong*, 18 D.o.E. App. Dec. 7 (2000); *In re Edward Schmidt*, 20 D.o.E. App. Dec. 121, 124(2001).

The open enrollment law and Department of Education rules require each school district to adopt a policy, which defines the term "insufficient classroom space" for that district. Iowa Code subsection 282.18(11)(2001); 281 IAC 17.6(3). Section 281 IAC 17.6(3) states that the "policy may include, but shall not be limited to, one or more of the following: nature of the educational program, grade level, available instructional staff, instructional method, physical space, pupil-teacher ratio, equipment and materials, facilities either being planned or under construction, facilities planned to be closed, finances available, sharing agreement in force or planned, bargaining agreement in force, law or rules governing special education class size, or board-adopted district educational goals and objectives." The policy must be reviewed annually. 281 IAC 17.6(3).

The Southeast Polk Board has determined that there is insufficient classroom space in the District's special education program at its high school for the 2002-2003 school year. The law provides that the Board makes the determination of insufficient classroom space based on the factors in the rules and the Board's own policy. The Board has made the determination that there is insufficient classroom space in its special education program for Kyle or any other special education student who wishes to open enroll into the District's high school for the 2002-2003 school year. The evidence presented by the District supports the Board's determination.

The first issue presented in this appeal is whether the Board reasonably denied Kyle's open enrollment application as a receiving district. The Board's determination that it will first look to the needs of its resident pupils is reasonable and is to be supported. Prior cases of the Department of Education called similar determinations "highly responsible." *In re Michael Cram*, 21 D.o.E. App. Dec. 48; *In re Ji Yoon Jeong*, 18 D.o.E. App. Dec. 7 (2000); *In re Alida Congden*, 15 D.o.E. App. Dec. 169, 173 (1998); *In re Amanda J. Baker*, 12 D.o.E. App. Dec. 210, 212 (1995); *In re Edward Schmidt*, 20 D.o.E. App. Dec. 121(2001). The Southeast Polk Board has applied its open enrollment/insufficient classroom space policy consistently. The District correctly looked at the impact of not just Kyle's application, but of all similarly situated applicants. We conclude that it was reasonable for the Board to determine that there is insufficient classroom space in the District's high school special education program for Kyle.

A second issue is presented because Kyle's grandmother believes it would nevertheless be in his best interest to open enroll to Southeast Polk. Iowa Code section 282.18(18)(2001) provides that "Notwithstanding the general limitations contained in this section, in appeals to the state board from decisions of school boards relating to student transfers under open enrollment, the state board shall exercise broad discretion to achieve just and equitable results which are in the best interest of the affected child or children." *Id.*

The State Board does not often exercise the discretion contained in 282.18(18). It is important that the balancing of interests provided for in the open enrollment statute is followed in most cases. *In re Beth Randolph*, 15 D.o.E. App. Dec. 128 (1998). The State Board has viewed section 282.18(18) as "an award by the legislature of an extraordinary power to be used by the State Board sparingly," and to be used only in cases where "a child's unique situation cries out for state board intervention." *In re Paul Farmer*, 10 D.o.E. App. Dec. 299, 302 (1993).

If the only consideration were with regard to Kyle himself, one could say that it might be in Kyle's best interest to go to Southeast Polk. However, Kyle is not the only child involved. Iowa Code 282.18(18) directs the State Board to "achieve just and equitable results which are in the best interest of the affected child or children." In this case, the affected children are Kyle and the resident students who attend the District's high school. We are sympathetic to Ms. Turner's wishes. However, we must consider the needs of all the children who live in the District, not just what would be best for one child who does not live there. Given the record at the appeal hearing, we conclude that it would not be in the best interest of the resident students of the District to allow even one nonresident student to enroll in the high school special education program through open enrollment during the 2002-2003 school year.

The Board's decision was consistent with state law, the rules of the Iowa Department of Education, and its own policies. Therefore, there are no grounds to justify reversing the District Board's denial of the open enrollment application for Kyle.

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

**III.
DECISION**

For the foregoing reasons, the decision of the Board of Directors of the Southeast Polk Community School District made on June 20, 2002, that denied Ms. Turner's open enrollment application for Kyle Turner, is hereby recommended for affirmance. There are no costs of this appeal to be assigned.

DATE

SUSAN E. ANDERSON, J.D.
ADMINISTRATIVE LAW JUDGE

It is so ordered.

DATE

GENE VINCENT, PRESIDENT
STATE BOARD OF EDUCATION