

**IOWA STATE BOARD
OF EDUCATION
(Cite as 21 D.o.E. App. Dec. 114)**

In re Jennifer Markey :
Christina Markey, Appellant, :
v. : DECISION
Burlington Community School District, :
Appellee. [Adm. Doc. # 4499]
:

The above-captioned matter was heard on August 13, 2002, before Susan E. Anderson, J.D., designated administrative law judge. Appellant, Christina Markey, was present telephonically, and was unrepresented by counsel. Appellee, Burlington Community School District [hereinafter, "the District"], was present telephonically in the person of Clarke Goltz, assistant superintendent. The District was represented by Sue Seitz of Belin Lamson McCormick Zumbach Flynn, P.C., of Des Moines, Iowa.

An evidentiary hearing was held pursuant to department rules found at 281 Iowa Administrative Code 6. Authority and jurisdiction for the appeal are found at 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 this appeal.

Appellant seeks reversal of a decision of the Board of Directors [hereinafter, "the Board"] of the District made on June 24, 2002, that denied the open enrollment application for her daughter, Jennifer Markey, beginning in the 2002-2003 school year, on the basis that her departure would have an adverse affect on the District's desegregation plan.

**I.
FINDINGS OF FACT**

Appellant resides in the Burlington School District. Jennifer Markey is a non-minority student and will enter kindergarten in the 2002-2003 school year. Ms. Markey filed a timely open enrollment application for Jennifer to go to the West Burlington Community School District for the following reasons: The Markeys live closer to the West Burlington elementary school than to Black Hawk Elementary, which is Jennifer's designated attendance center in Burlington. Jennifer's father is in poor health and has had to make emergency trips to Iowa City hospitals in the recent past. Ms. Markey would like to be closer to Jennifer's school in case of a future emergency.

Ms. Markey filed a timely open enrollment application for Jennifer for the 2002-2003 school year. The Board denied the application on June 24, 2002, because the District determined that the departure of this student would have an adverse affect on the District's desegregation plan.

Assistant Superintendent Goltz testified at the appeal hearing that Black Hawk Elementary School has before-and-after care available for Jennifer in case Jennifer's father had an emergency situation in the future. The Burlington Community School District has a formally adopted desegregation plan, Board Policy 105.1; a formally adopted open enrollment policy, Board Policy 105; and formally adopted administrative procedures to implement the desegregation plan and the open enrollment policy, Board Policy 105.1R. The open enrollment policy prohibits granting open enrollment when the transfer would have "a negative effect on the racial balance of the district established in support of the District's Desegregation Plan." The policy and the procedures contain objective criteria that the District uses to determine whether a request for transfer would adversely affect the desegregation plan and to prioritize those deemed not to have an adverse impact. Board Policy 105.1R states:

Open Enrollment – Rules (Desegregation Plan)

The following specific procedures will be followed in implementing the requests for Open Enrollment.

1. Each fall, using the official enrollment data as of the 3rd Friday in September, the percentage of minority students will be calculated for the district and each school and building. A composite ratio of the numbers of minority and non-minority students enrolled in the district on the official enrollment count shall be established.
2. To maintain racial diversity in the Burlington Schools, minority students desiring to transfer from the district will be denied approval if they reside in an attendance area with a minority enrollment percentage which is at least five (5) percent less than the district average. Non-minority students wishing to transfer from the district will be denied approval if they reside in an attendance area with a minority enrollment that is ten (10) percent greater than the district average.
3. If non-minority students apply to transfer out of the district in greater numbers than the ratio established for the year, those students allowed to transfer will be limited to that ratio.

...

Id.

The procedures describe the District's random selection process to determine which students will be approved if more non-minority students apply for open enrollment than can be allowed out according to the composite ratio. The procedures also describe the Board's policy of giving preference to siblings of students already open enrolled out of the District as follows:

5. Applications of siblings of previously approved students will be given first priority as long as the request is to the same district as the siblings are attending. Priority for siblings will only be recognized for the year of first eligibility. Students from this group will be approved in the order in which their siblings were previously approved.

Id.

Assistant Superintendent Goltz testified that the District's minority enrollment for the 2001-2002 school year was 15% and the non-minority enrollment was 85%, resulting in a composite ratio of 1:7. This means that for every minority student who open enrolls out of the District for 2002-2003, seven non-minority students would be approved to leave. Four minority students and 29 non-minority students originally applied for open enrollment for the 2002-2003 school year. The four minority students were approved out. One of the 29 students was not eligible because his attendance center, Salter Elementary, was closed to open enrollment with a minority population of 43%. The remaining 28 applications were approved out. (Applying the composite ratio of 1:7, 4 minority students multiplied by 7 equals 28 nonminority students who were eligible to open enroll out.) Since January 2002, seven additional non-minority timely-filed applications have been filed, including Jennifer's. Jennifer's application was timely because she will be in kindergarten next year. Jennifer's attendance center, Blackhawk Elementary, is not closed to open enrollment. Jennifer is, therefore, on the resulting waiting list of seven additional applications that were denied because they exceeded the 1:7 composite ratio. The denial occurred at the June 24, 2002, Board meeting.

II. CONCLUSIONS OF LAW

Two important interests conflict in this case: the right of parents to choose the school they believe would be best for their children under the Open Enrollment Law, and the requirement that school districts affirmatively act to eliminate segregated schools. The Open Enrollment statute sets out these two interests, and provides as follows:

Iowa Code section 282.18(1)(2001) states, "It is the goal of the general assembly to permit a wide range of educational choices for children enrolled in schools in this state and to maximize ability to use those choices. It is therefore the intent that this section be

construed broadly to maximize parental choice and access to educational opportunities which are not available to children because of where they live." *Id.*

Iowa Code section 282.18(3)(2001) states, "In all districts involved with voluntary or court-ordered desegregation, minority and nonminority pupil ratios shall be maintained according to the desegregation plan or order. The superintendent of a district subject to voluntary or court-ordered desegregation may deny a request for transfer under this section if the superintendent finds that enrollment or release of a pupil will adversely affect the district's implementation of the desegregation order or plan. If, however, a transfer request would facilitate a voluntary or court-ordered desegregation plan, the district shall give priority to granting the request over other requests." *Id.*

Iowa Code section 282.18(12)(2001) states, "The board of directors of a school district subject to voluntary or court-ordered desegregation shall develop a policy for implementation of open enrollment in the district. The policy shall contain objective criteria for determining when a request would adversely impact the desegregation order or plan and criteria for prioritizing requests that do not have an adverse impact on the order or plan." *Id.*

In this case, Ms. Markey has valid reasons for requesting open enrollment. She is genuinely interested in what is best for her child and is seeking to obtain it by filing for open enrollment. If the Burlington District did not have a desegregation plan, there is no question that this parent could open enroll her child as requested, since the application was filed in a timely manner. However, the District does have a voluntary desegregation plan. The District's open enrollment policy contains objective criteria for determining when open enrollment transfers would adversely impact the desegregation plan as required by Iowa Code section 282.18(12) (2001). The policy also includes a provision for maintaining a district-wide ratio of minority to non-minority students (Bd. Policy 105R). The District's policy is similar to that of the Des Moines Independent Community School District. The Des Moines District's open enrollment policy was upheld by the Polk County District Court in *Des Moines Ind. Comm. Sch. Dist. V. Iowa Dept. of Education*, AA2432 (June 1, 1995). That decision upheld the Des Moines District Board's right to deny timely-filed open enrollment applications using the district-wide composite ratio. That right also applies to the Burlington Board.

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--IAC 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.)

The facts in the record at the appeal hearing do not show that the District's plan and policies were inappropriately applied to the facts of Ms. Markey's open enrollment application for Jennifer. The facts also show that the Board's denial was consistent with the law and its own policy. Therefore, the Board's decision to deny this application was reasonable.

Any motion or objection not previously ruled upon or denied is hereby overruled.

**III.
DECISION**

For the foregoing reasons, the decision of the Board of Directors of the Burlington Community School District made on June 24, 2002, that denied the open enrollment request for Jennifer Markey for the 2002-2003 school year, 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