

**Iowa State Board  
of Education**  
(Cite as 21 D.o.E. App. Dec. 25)

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***In re Shelby McClure*** :  
Brooke McNeal, Appellant :  
v. : DECISION  
Des Moines Independent Community : [Adm. Doc.# 4473]  
School District, :  
Appellee. :

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The above-captioned matter was heard on June 11, 2002, before Susan E. Anderson, J.D., designated administrative law judge, presiding. Appellant Brooke McNeal and her father, Doug McNeal, were present and unrepresented by counsel. Appellee, Des Moines Independent Community School District [hereinafter "the District"] was present in the person of Dr. Thomas Jeschke, Executive Director of Student and Family Services. The District was also unrepresented by counsel.

An evidentiary hearing was held pursuant to departmental rules found at 281 Iowa Administrative Code chapter 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 before them.

Appellant seeks reversal of a decision of the Board of Directors [hereinafter "the Board"] of the District made on April 2, 2002, which denied her application for open enrollment out of the District beginning in the 2002-2003 school year. The application was denied on the basis that the departure of Shelby McClure from the District would have an adverse effect on the District's desegregation plan.

**I.  
Findings of Fact**

Appellant Brooke McNeal filed a timely application for her child, Shelby McClure, to open enroll out of the Des Moines District for the 2002-2003 school year. Shelby McClure, a non-minority student, will enter kindergarten for the 2002-2003 school year. Her assigned attendance center is Hillis Elementary School. Her mother, Brooke McNeal, applied for open enrollment

to Urbandale for the following reasons: Brooke McNeal and Rob McClure live at 6306 Urbandale Avenue with their daughter, Shelby McClure. Their address is near the boundary line between the Urbandale District and the Des Moines District. Shelby's primary child care provider and great grandmother, L. Edrie McNeal, lives within walking distance of the Olmstead kindergarten program in Urbandale. Shelby's parents, therefore, would like her to attend the Urbandale public school district's kindergarten program.

Ms. McNeal's application for open enrollment was denied on April 2, 2002, because the District determined that the departure of Shelby McClure would adversely affect the composite ratio of minority to non-minority students for the District as a whole. Mr. McNeal believes that the District discriminates based on race in its desegregation plan and policy.

Dr. Jeschke testified that the District has a formally adopted desegregation plan and open enrollment policy (Des Moines Board Policy Code 639). The policy prohibits granting open enrollment when the transfer would adversely impact the District's desegregation plan.

The first part of the District's open enrollment policy does not allow non-minority students to exit, or minority students to enter, a particular building if the building's minority population exceeds the District's minority percentage by more than 15 percentage points. The percent of minority students in the District in the 2002-2003 school year is 29.5 percent. The District uses this year's minority percent to estimate what next year's minority enrollment will be in any particular building. Thus, any building with a minority population of 44.5 percent or greater this year is closed to open enrollment for next year. The buildings closed to open enrollment for the 2002-2003 school year are Adams, Capitol View, Edmunds, King, Longfellow, Lovejoy, Madison, McKinley, Moulton, Perkins, Wallace, Harding, Hiatt, and North.

The second part of the policy uses a ratio of minority to non-minority students for the District as a whole to determine when the departure of students would adversely affect the desegregation plan. This ratio is based on the District's official enrollment count taken in September. The District determined that since 29.5 percent of the District's students were minorities, the composite ratio was 1:2.39. This means that for every minority student who open enrolls out of the District for 2002-2003, 2.39 non-minority students would be approved to leave.

The District determines eligibility or ineligibility of each applicant for open enrollment on a case-by-case basis. Each child's racial status is verified. The following categories are considered to be minorities: Black/not Hispanic; Asian/Pacific Islander; Hispanic; and American Indian/Alaskan Native. If there is a question regarding a child's race, the parent(s) may be asked to verify it.

The District's policy requires that students with siblings who are already open enrolled out of the District be given first consideration unless the student is assigned to a building closed to open enrollment. If this is the case, the sibling preference policy does not apply and the student is ineligible.

The open enrollment application form, which is prepared by the Iowa Department of Education, does not provide a place for parents to state reasons for requesting timely-filed open enrollment. The District's policy, however, contains a hardship exception that states in part:

Hardships may be given special consideration. Hardship exceptions may include, but are not limited to, a change in a child's parent's marital status, a guardianship proceeding, adoption, or participation in a substance abuse or mental health treatment program.

(Policy Code 639.)

If information is attached to the application form, the District considers it to determine whether the applicant qualifies for the hardship exception.

Between July 1, 2001, and January 1, 2002, the District received 141 open enrollment applications. For the 2002-2003 school year, 13 minority students and 128 non-minority students applied for open enrollment. Using the composite ratio of 1:2.39, the District determined that 31 non-minority students would be approved for open enrollment ( $13 \times 2.39 = 31.07$ ). Of the 128 non-minority applicants, 20 were determined to be ineligible because they were assigned to a building closed to open enrollment. This left 108 non-minority applicants for 31 slots. Ten of these were approved under the sibling preference portion of the policy, resulting in 21 remaining slots and 98 applicants. The remaining applicants were placed in numerical order according to a random number program and the first 21 were approved. The remainder were denied and placed on a waiting list that will be used only for the 2002-2003 school year. If additional minority students leave the District through open enrollment, the students at the top of this list will be allowed to open enroll in numbers determined by the composite ratio.

The District Board determined that the departure of Appellant's child, who is on the waiting list, would adversely affect the District's desegregation plan. The Board denied her application on April 2, 2002.

## II. Conclusions of Law

Two important interests conflict in these appeals: 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 §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."

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

Iowa Code §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 shall adversely impact the desegregation order or plan and criteria for prioritizing requests that do not have an adverse impact on the order or plan."

Appellant 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 Des Moines District did not have a desegregation plan, there is no

question that Appellant could open enroll her child as requested, as long as the application was filed in a timely manner. However, the District does have such a plan. The District's open enrollment policy contains objective criteria for determining when open enrollment transfers would adversely impact its desegregation plan as required by Iowa Code §282.18(2)(2001). The policy establishes criteria for closing certain buildings to open enrollment (Policy Code 639). The policy also includes a provision for maintaining a district-wide ratio of minority to non-minority students (Policy Code 639).

The Des Moines District's open enrollment policy has been 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 building-closed-to-open enrollment provision and the district-wide composite ratio. The district court's decision also stated with regard to the Equal Protection Clause:

The District's policy does not prefer one race over another. While the policy may have differing impacts, depending on the number and race of students applying for open enrollment it does not prefer or advance one race over another. The students who are denied open enrollment are not denied the right to attend a desegregated public school; they are merely limited to attending the public school in their district.

*Des Moines Ind. Comm. Sch. Dist. V. Iowa Dept. of Education*, AA2432 (June 1, 1995).

The State Board of Education has been directed by the Legislature to render decisions that are "just and equitable" [§282.18(18)], "in the best interest of the affected child or children" [§282.18(18)], 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. The test is reasonableness.

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

The facts in the record at the appeal hearing do not show that the District's policy was inappropriately or incorrectly applied to the facts of Shelby McClure's case. Therefore, the Board's decision to deny this application was reasonable and in the best interest of education.

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

**III.  
Decision**

For the reasons stated above, the decision of the Board of Directors of the Des Moines Independent Community School District, made on April 2, 2002, denying the open enrollment application for Appellant's child, Shelby McClure, is hereby recommended for affirmance. There are no costs of this appeal to be assigned.

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DATE

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

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DATE

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GENE VINCENT, PRESIDENT  
STATE BOARD OF EDUCATION