

**Iowa State Board
of Education**
(Cite as 20 D.o.E. App. Dec. 307)

***In re Linndy Blaine, Trisha Lyttle,
Mark Schreck, Kelsey, Kane &
Kyle Michelsen*** :

Robin Saldana, Jim and Sharon
Lyttle, Kathy & Mark Schreck,
Tamara Michelsen, Appellants :

v. : DECISION

Des Moines Independent Community : [Adm. Doc.#s 4437, 4430,
School District, : 4423, & 4441]
Appellee. :

The above-captioned matters were consolidated and were heard on March 28, 2002, before Susan E. Anderson, J.D., designated administrative law judge, presiding. The following Appellants were present and unrepresented by counsel: Robin Saldana; Jim and Sharon Lyttle; Kathy and Mark Schreck; and Tamara Michelsen. Appellee, Des Moines Independent Community School District [hereinafter "the District"] was present in the persons of Dr. Thomas Jeschke, Executive Director of Student Services; and Mary Jones, Deputy Director of Student 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 appeals 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 consolidated appeals before them.

Appellants seek reversal of decisions of the Board of Directors [hereinafter "the Board"] of the District made on January 22, 2002, which denied their applications for open enrollment out of the District beginning in the 2002-2003 school year. The applications were denied on the basis that the departure of these students from the District would have an adverse effect on the District's desegregation plan.

I.
Findings of Fact

All Appellants filed timely applications for their non-minority children to open enroll out of the Des Moines District for the 2002-2003 school year.

In re Linndy Blaine:

Linndy Blaine, a non-minority student, will enter ninth grade for the 2002-2003 school year. Her assigned attendance center is East High School. Her mother, Robin Soldana, applied for open enrollment to Southeast Polk for the following reasons: Courtney Blaine, Linndy's older sister, currently attends tenth grade in the Southeast Polk District. Courtney, unlike Linndy, lives with her grandmother in the Southeast Polk District. Ms. Soldana would like Linndy to be able to see Courtney more often and believes that if the two girls attended the same school district, this could occur.

Dr. Jeschke stated that the District's sibling preference policy does not apply to Linndy because Courtney is not a previously approved student under open enrollment from the Des Moines District.

Ms. Soldana's application for open enrollment was denied on January 22, 2002, because the District determined that the departure of this student would adversely affect the composite ratio of minority to non-minority students for the District as a whole.

In re Tricia Lyttle:

Tricia Lyttle, a non-minority student, will enter eleventh grade, for the 2002-2003 school year. Her assigned attendance center is Roosevelt High School. Her parents, Jim and Sharon Lyttle, applied for open enrollment to Johnston for the following reasons: Tricia has attended the Iowa Christian Academy, a private school, for the past three years. She has made many friends at church in Johnston and she would like to open enroll to Johnston so that she could have an easier transition to public school. Tricia decided that she would rather go to public school than private school for social reasons. Her psychologist, Dr. Dilley, signed a letter stating that it would be better for her "academic and social needs" for her to go to school in Johnston. Dr. Dilley, however, is not counseling Tricia for any specific psychological problem currently. His opinion that Tricia would be better off in Johnston is based mainly on the fact that she already has friends there.

Dr. Jeschke testified that the ratio the Des Moines District uses for its desegregation plan is computed using the previous year's enrollment figures. He explained that Tricia's departure would adversely affect the composite ratio because her family resides in the Des Moines District and she has to enroll in the District in order to request open enrollment out.

The Lyttles' open enrollment application was denied on January 22, 2002, because the District determined that the departure of this student would adversely affect the composite ratio of minority to non-minority students for the District as a whole.

In re Mark Schreck:

Mark Schreck, a non-minority student, will enter sixth grade for the 2002-2003 school year. His assigned attendance center is Hoyt Middle School. His parents, Kathy and Mark Schreck, applied for open enrollment to Southeast Polk for the following reasons: The family plans to move into the Southeast Polk District in the future, but they haven't put their home on the market yet. Mr. Schreck is a soccer coach in Pleasant Hill, coaching teams that are not a part of the District's programs. Mrs. Schreck volunteers at Pleasant Hill Elementary School, which houses Des Moines kindergarten through fifth grade.

The Schrecks feel that Mark needs one more year in an elementary building before going to middle school. Hoyt Middle School in Des Moines houses sixth through eighth grade. If Mark were in the Southeast Polk District, his sixth grade year would be spent at an elementary school building instead of a middle school building. The Schrecks also testified that their son is somewhat overweight and that he has experienced teasing from Des Moines children when playing soccer games against Des Moines teams in the private league. They believe that Mark would not experience the teasing about his weight if he attended the Southeast Polk District. They also prefer the Southeast Polk District's dress codes.

Dr. Jeschke testified that at the point when the Schrecks have an accepted offer on property in the Southeast Polk District, the Des Moines District would immediately approve Mark's open enrollment application.

The Schrecks' application for open enrollment was denied on January 22, 2002, because the District determined that the departure of this student would adversely affect the composite ratio of minority to non-minority students for the District as a whole.

In re Kelsey, Kyle and Kane Michelson:

Kelsey, Kyle and Kane Michelson are non-minority students. Kyle and Kane are twins and will enter the seventh grade for the 2002-2003 school year. Their assigned attendance center is Hoyt Middle School. Kelsey will enter kindergarten in the 2002-2003 school year. Her assigned attendance center is Douglas Elementary School. Their mother, Tamara Michelson, applied for open enrollment to Southeast Polk for the following reasons: The Michelson family is planning to move to the Southeast Polk District sometime during 2002. They are building a house in the Southeast Polk District that should be ready to be lived in sometime during the fall of 2002.

Dr. Jeschke stated that at the point in time when the Michelsons sell their house in the Des Moines District, they should notify his office. The Des Moines District would then immediately approve the open enrollment applications for all three children.

Mrs. Michelson's applications for open enrollment were denied on January 22, 2002, because the District determined that the departure of these students would adversely affect the composite ratio of minority to non-minority students for the District as a whole.

The District:

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 for 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 Appellants' children, all of whom are on the waiting list, would adversely affect the District's desegregation plan. The Board denied their applications on January 22, 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."

Appellants have valid reasons for requesting open enrollment. They are genuinely interested in what is best for their children and are 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 Appellants could open enroll their children as requested, as long as the applications were 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 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). One of the Appellants argues that a student who has attended private school cannot impact the District's desegregation plan. Two previous State Board decisions have decided that such a student does have a negative impact on the desegregation plan. *In re David Early*, 8 D.o.E. App. Dec. 206, 213-214 (1991); *In re Matthew Mitchell, et al.*, 16 D.o.E. App. Dec. 27, 37 (1998). "The District uses the entire student population in an attendance area, not just students who actually attend, to make planning and staffing decisions." *Id.*

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 any individual student's case. Therefore, the Board's decisions to deny these applications were 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 decisions of the Board of Directors of the Des Moines Independent Community School District, made on January 22, 2002, denying the open enrollment applications for Appellants' children, are hereby recommended for affirmance. There are no costs of this appeal to be assigned.

DATE

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

DATE

PRESIDENT
STATE BOARD OF EDUCATION