

**Iowa State Board  
of Education**  
(Cite as 20 D.o.E. App. Dec. 294)

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*In re Rebecca Cuppy, Connor Young, :*  
*Marissa Woodsmall, Tristan Sturgill,*  
*Breanna Poage, Daykota Shelton,*  
*Alyssa Bone, Henry Tanner Newell, :*  
*Chandler Greer, Sarah Clarke, &*  
*Kirsten St. Clair :*

Brian & Jeanette Cuppy, Brandon  
& Lyndia Young, Jennie Cushman &  
Scott Woodsmall, Alexa Sturgill, :  
Tiffany & Kent Poage, Kandi  
Shelton, Victoria Clark-Bone,  
Tamara Newell, Raymond & Shelly  
Greer, Mary Markham Clarke & Steve  
Clarke, Mary Jo & Rod St. Clair,  
Appellants :

v. : DECISION

Des Moines Independent Community : [Adm. Doc.#s 4454, 4415, 4417,  
School District, : 4419, 4421, 4427, 4435, 4436,  
Appellee. : 4438, 4440, & 4447]

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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: Brian and Jeanette Cuppy; Brandon and Lyndia Young; Jennie Cushman and Scott Woodsmall; Alexa Sturgill; Tiffany and Kent Poage; Kandi Shelton; Victoria Clarke-Bone; Tamara Newell; Raymond and Shelly Greer; Mary Markham Clarke and Steve Clarke; and Mary Jo and Rod St. Clair. 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, February 5, and February 19, 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, during which all of the children will be kindergartners.

**In re Rebecca Cuppy:**

Rebecca Cuppy, a non-minority student, will enter kindergarten for the 2002-2003 school year. Her assigned attendance center is Pleasant Hill Elementary School. Her parents, Brian and Jeanette Cuppy, applied for open enrollment to Southeast Polk for the following reasons: They want full-day kindergarten for Rebecca in the Southeast Polk District. They plan to move to the Southeast Polk District in about two years and they don't want to transfer Rebecca into a different school at that point. A lot of their friends go to the Southeast Polk District and their current daycare is located in the Southeast Polk District.

Mr. Cuppy is a police officer on the East side of Des Moines and he is afraid that there might be some sort of retaliation against Rebecca in the Des Moines Schools due to his occupation. He also believes that the District discriminates based on race in its desegregation policy.

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

The Cuppys' application for open enrollment was denied on February 5, 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 Connor Young:**

Connor Young, a non-minority student, will enter kindergarten for the 2002-2003 school year. His assigned attendance center is Pleasant Hill Elementary School. His parents, Brandon and Lyndia Young, applied for open enrollment to the Southeast Polk Community School District for the following reasons: In November of 2001, the family was in the process of buying land in the Southeast Polk District. In December 2001, Mr. Young's grandparents developed health problems and asked the Youngs to remain in Pleasant Hill to help take care of them. In addition, Connor's daycare could be with other grandparents who live in the Southeast Polk District and whose house has a bus stop in front of it. Mr. Young works sometimes in the Southeast Polk District. The family also goes to church and has friends in the Southeast Polk District.

The Youngs' 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 Marissa Woodsmall:**

Marissa Woodsmall, a non-minority student, will enter kindergarten for the 2002-2003 school year. Her assigned attendance center is McKee Elementary School. Her parents, Jenni Cushman and Scott Woodsmall, applied for open enrollment to Southeast Polk District for the following reasons: Marissa's daycare is currently in the Southeast Polk District. Ms. Cushman works in Ames and travels out of state frequently. Mr. Woodsmall works in Colfax, sometimes working long hours. The family's main concern is transportation. They believe that the daycare options in Des Moines would not transport Marissa to Phillips Elementary School, a school in the Des Moines District that has no attendance area. Marissa is currently on a waiting list to get into Phillips Elementary for all-day kindergarten. The family plans to move to Altoona in the future.

Dr. Jeschke stated that at the point when the family has an accepted offer on property in the Southeast Polk District, the Des Moines District would immediately approve Marissa's open enrollment application.

Marissa'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 Tristan Sturgill:**

Tristan Sturgill, a non-minority student, will enter kindergarten in the 2002-2003 school year. His assigned attendance center is Hubbell Elementary School. His mother, Alexa Sturgill, applied for open enrollment to West Des Moines for the following reasons: Tristan's sibling, Madeline Sturgill, was previously open enrolled into the West Des Moines District, currently attending Fairmeadows Elementary School. Ms. Sturgill works in West Des Moines. The children's daycare in West Des Moines transports the older daughter to school and would do the same for Tristan as well. Also, in December 2001, Ms. Sturgill separated from Tristan's father. She does not want Tristan to have to attend school in another District from his sister in order to make the transition to kindergarten as easy as possible.

Dr. Jeschke stated that the Des Moines District had been unaware that Tristan had an older sibling who was also open enrolled out of the District. Dr. Jeschke stated that Tristan will be placed at the top of the waiting list and approved immediately if and when another minority student is granted open enrollment. The District's sibling preference policy will be applied to Tristan because the Hubbell Elementary building is not closed to open enrollment for the 2002-2003 school year.

The District had denied Ms. Sturgill's application for open enrollment 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. This denial would not have occurred if the District had been aware of the fact that Tristan's sibling was already open enrolled out of the District.

**In re Breanna Poage:**

Breanna Poage, a non-minority student, will enter kindergarten for the 2002-2003 school year. Her assigned attendance center is Madison Elementary School. Her parents, Tiffany and Kent Poage, applied for open enrollment to Waukee for the following reasons: Ms. Poage teaches at the Waukee Middle School. Mr. Poage frequently works out of town. The Poages are primarily concerned with transportation issues if Breanna were to attend school at Madison Elementary in Des Moines. Breanna's daycare is currently in the Waukee District and she has younger siblings that attend that daycare. The Waukee daycare will transport Breanna to and from Waukee Elementary School but not to Des Moines.

The family doesn't feel that they can move to Waukee because they are caring for Mr. Poage's mother, who has health problems. The family plans to move to Waukee when they can make other

arrangements to take care of Mr. Poage's mother. In 2000, the Poages had planned to move to Waukee and had put their home on the market. At that point, Mr. Poage's mother was diagnosed with Alzheimer's Disease. The Poages still plan to move to Waukee. They are currently living with Mr. Poage's mother in order to take care of her.

Dr. Jeschke stated that at the point when the family has an accepted offer on property in the Waukee District, the Des Moines District would immediately approve Breanna's open enrollment application to the Waukee District.

The Poages' 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 in the Madison Elementary Building. Madison Elementary School is closed to open enrollment for the 2002-2003 school year, with a minority enrollment percentage of 44.5%.

**In re Daykota Shelton:**

Daykota Shelton, a non-minority student, will enter kindergarten in the 2002-2003 school year. Her assigned attendance center is Cattrell Elementary School. Her mother, Kandi Shelton, applied for open enrollment to the Saydel District for the following reasons: Daykota would be the fourth generation of people in her family to attend school in Saydel and this is important to the grandparents. Ms. Shelton is also worried about the educational quality in the Des Moines District because of budget cuts.

Ms. Shelton'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 in the Des Moines District as a whole.

**In re Alyssa Bone:**

Alyssa Bone, a non-minority student, will enter kindergarten in the 2002-2003 school year. Her assigned attendance center is Oak Park Elementary School. Her mother, Victoria Clark-Bone, applied for open enrollment to Urbandale for the following reasons: Alyssa currently attends preschool and daycare in Urbandale. The family is trying to move to Urbandale in the future. The family attends church in Urbandale. The family introduced a letter from their realtor stating that they are trying to move in the near future, but they are holding off their plans because the father's employment situation is uncertain at this time.

Dr. Jeschke stated that at the point when the family has an accepted offer on property in the Urbandale District, the Des Moines District would immediately approve Alyssa's open enrollment application to the Urbandale District.

Ms. Clark-Bone'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 in the Des Moines District as a whole.

**In re Henry Tanner Newell:**

Henry Tanner Newell ("Tanner"), a non-minority student, will enter kindergarten in the 2002-2003 school year. His assigned attendance center is Madison Elementary School. His mother, Tamera Newell, applied for open enrollment to Saydel for the following reasons: Ms. Newell is a graduate of the Saydel District and they live three blocks out of the Saydel District. Tanner's grandmother lives in Saydel, where he is in a kindergarten readiness program at the Saydel Daycare. The family also has friends in Saydel. The family would like to have full-day kindergarten in Saydel. The mother is concerned with the crime and violence in the Madison Elementary School area.

Dr. Jeschke testified that Madison Elementary is closed to open enrollment for the 2002-2003 school year, with a minority enrollment percentage of 44.5%. He assured Ms. Newell that the school grounds and school building are safe.

Ms. Newell'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 in the Madison Elementary Building.

**In re Chandler Greer:**

Chandler Greer, a non-minority student, will enter kindergarten in the 2002-2003 school year. His assigned attendance center is Windsor Elementary School. His parents, Raymond Greer and Shelly Morris-Greer, applied for open enrollment to Urbandale for the following reasons: Chandler has attended daycare in Urbandale since he was two years old. The children who attend that daycare may ride the bus to and from the Urbandale School. The family likes Windsor Elementary School, but transportation is an issue for the family. They couldn't afford preschool for Chandler and they don't feel that they could afford daycare in Des Moines.

Dr. Jeschke testified that the Des Moines District's Metro-Kids Daycare Program might be an option for the family. He mentioned that if the family completed the proper forms, there might be some relief from the Metro-Kids fee of \$47.00 per week.

The Greers' 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 Sarah Clarke:**

Sarah Clarke ("Sadie"), a non-minority student, will enter kindergarten in the 2002-2003 school year. Her assigned attendance center is Hillis Elementary School. Her parents, Mary Markham Clarke and Steve Clarke, applied for open enrollment to Urbandale for the following reasons: The family likes Hillis Elementary School, but they are worried about Sarah's attending Hoover High School when she reaches high-school age. Their address is within the Urbandale City limits, but it is within the Des Moines District's boundaries. Some of their friends' children attend Urbandale. They adopted Sarah from Russia when she was 2½ years old and she has had a lot of changes in her life. They would prefer that she go to Urbandale where she has friends.

The Clarkes' 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 Kirsten St. Clair:**

Kirsten St. Clair, a non-minority student, will enter kindergarten in the 2002-2003 school year. Her assigned attendance center is Hanawalt Elementary School. Her parents, Mary Jo and Rod St. Clair, applied for open enrollment to Urbandale for the following reasons: The family just moved into the District in July 2001 from a more rural area of the state. Both parents work. Kirsten has attended daycare and preschool in Urbandale where the family has made friends. They have financial concerns about changing daycare. The family testified that they really had not visited Hanawalt Elementary School, nor had they explored any daycare options within the Des Moines District.

The St. Clairs' application for open enrollment was denied on February 19, 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.

**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 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 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; February 5, 2002; or February 19, 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 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 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; February 5, 2002; or February 19, 2002, denying the open enrollment applications for Appellants' children, are hereby recommended for affirmance. There are no costs of this appeal to be assigned.

5-7-2002

DATE

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

6-6-02

DATE

Ann E. Knott  
PRESIDENT  
STATE BOARD OF EDUCATION