

**2wIOWA STATE BOARD
OF EDUCATION
(Cite as 20 D.o.E. App. Dec. 240)**

<i>In re Dylan Lee Scott Vanderwerf</i>	:	
Scott Vanderwerf,	:	
Appellant,	:	
v.	:	PROPOSED DECISION
Waterloo Community School District,	:	
Appellee.	:	[Admin Doc. #4446]

The above-captioned matter was heard telephonically on March 7, 2002, before Susan E. Anderson, J.D., designated administrative law judge, presiding. Appellant, Scott Vanderwerf, and his wife, Tammy, were present telephonically and were unrepresented by counsel. Appellee, Waterloo Community School District [hereinafter, “the District”], was present telephonically in the persons of Sharon Miller, board secretary and director of school and community relations; and Patrick Clancy, director of student and supplemental services. The District was represented by Attorney Steven Weidner of Swisher & Cohrt, P.L.C., of Waterloo, Iowa.

An evidentiary hearing was held pursuant to departmental rules found at 281 Iowa Administrative Code 6. Authority and jurisdiction for this 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 before them.

Appellant seeks reversal of a decision of the Board of Directors [hereinafter, “the Board”] of the District made on January 28, 2002, that denied his application for open enrollment for his son, Dylan Lee Scott Vanderwerf, beginning in the 2002-2003 school year on the basis that his departure would have an adverse affect on the District’s desegregation policy.

**I.
FINDINGS OF FACT**

Scott Vanderwerf is the father of Dylan Lee Scott Vanderwerf [“Dylan”], a minority student who will be entering kindergarten during the 2002-2003 school year. The Vanderwerf family resides within the Black Hawk Elementary School attendance area of the Waterloo Community School District. Dylan is an Asian minority student whose fifth birthday will be on March 30, 2002.

Mr. Vanderwerf timely filed the open enrollment application on July 1, 2001, for Dylan to attend school in the Cedar Falls District because he believes that it is in Dylan’s best interest to attend an elementary school with other Asian students. He testified that he had been told that Orchard Hill Elementary in Cedar Falls has nine Asian students. Black Hawk elementary has one. Mr. and Mrs. Vanderwerf have visited Black Hawk and have no reason to believe that

Dylan would be teased or discriminated against if he attended there. They are concerned only that if he were teased, he should have other Asian students to talk to about it.

Sharon Miller, board secretary, testified for the District concerning the policies and procedures that were applied to Mr. Vanderwerf's open enrollment application for Dylan. The District publishes these policies and procedures in the local newspaper and on the local cable television channel. The District has an open enrollment/desegregation policy. The Board's policy states:

Maintaining the District's current racial characteristics is critical to its desegregation efforts, ability to comply with state guidelines on minority/nonminority ratios, [and] long-term racial and economic stability. Therefore, minority/non-minority student ratios at both the District level and the building levels will be primary determinants when making decisions on transfer applications.

(Board Policy 501.12, 1999, reviewed 1999.)

The Board's Administrative Regulation 501.12-R details the guidelines that will be followed in approving or denying open enrollment applications. Guideline 3 states:

To maintain racial diversity in district schools, applications for minority students to open enroll from the District will be denied if they attend a school with a minority enrollment percentage which is at least five (5) percent less than the district average. Applications for nonminority students to open enroll from the District will be denied if they attend a school with a minority enrollment that is five (5) percent greater than the District average.

Id.

The District's statistics for purposes of implementing the open enrollment policy regarding applications for the 2002-2003 school year show a minority enrollment of 31.4 percent for the District as a whole. Those same statistics show the percentage of minority students at Black Hawk Elementary School to be 20.6%. Dylan was not eligible to leave Black Hawk Elementary School because that building's nonminority enrollment was more than 5% below the District's minority enrollment. Even though the difference was only four-tenths of a percentage point, the District strictly follows its policy even down to one-tenth of a percentage point.

The District denied Mr. Vanderwerf's request for open enrollment at its Board meeting on January 28, 2002. The District reasoned that Dylan's departure from Black Hawk Elementary School would have an adverse effect on its desegregation plan. Dylan is a minority student who would not be allowed to exit Black Hawk Elementary School under the building-specific part of the District's desegregation plan. Mr. Vanderwerf then filed this appeal.

Ms. Miller testified that the District's desegregation policy is designed to increase the diversity in all buildings and to teach the students to treat each other with respect. There are guidance counselors at all the buildings.

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).

The Board's decision to deny the open enrollment application for Louis was based on specific provisions of Iowa's Open Enrollment Law. 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.

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.¹

This case represents a conflict between two important interests: 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 act affirmatively to eliminate segregated schools. If the Waterloo District did not have a desegregation policy, there is no question that Mr. Vanderwerf could open enroll Dylan, since the application was timely filed. However, the District does have a policy which was upheld in *Waterloo Community School District v. Iowa Dept. of Education*,

¹ This language clearly contemplates two separate documents, a desegregation plan and a policy implementing the plan. If the District intends to rely on a desegregation program as a basis for denying open enrollment applications in the future, it should have a plan that is readily available to its patrons.

Black Hawk County District Court Decision on Appeal, Nos. LACV075042 and LACV077403, August 8, 1996.

The District adopted its current open enrollment/desegregation policy and regulations in 1999. The Board policies contain objective criteria for determining when open enrollment transfers would adversely impact the District's desegregation program and for prioritizing requests that would not adversely impact the program. These criteria are detailed in Board Policy 501.12-R. The policy contains criteria for determining how transfers from individual school buildings will be approved or denied.

Board Policy 501.12 and Regulation 501.12-R2 are, for all relevant purposes, the same policy and regulation reviewed by the Department of Education in its decision *In re Megan, Mindy, & Drew Engel*, 11 D.o.E. App. Dec. 262(1994) and upheld by Judge Briner in the Iowa District Court for Black Hawk County in *Waterloo Community School District v. Iowa Department of Education*, Case No. LACV075042, decided on August 8, 1996.

We conclude that the Board reasonably applied its current policies and regulations to the facts of Scott Vanderwerf's open enrollment application for his son, Dylan. The family's motives for applying for open enrollment have never been considered by the State Board or by the Department of Education as reasons to override a district's desegregation policy.

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

**III.
DECISION**

For the reasons stated above, the decision of the Board of Directors of the Waterloo Community School District made on January 28, 2002, denying the open enrollment application for Dylan Lee Scott Vanderwerf, is hereby recommended for affirmance. There are no costs to this appeal to be assigned.

DATE

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

It is so ordered.

DATE

CORINE HADLEY, PRESIDENT
STATE BOARD OF EDUCATION