

**STATE BOARD
Of EDUCATION
(Cite as 20 D.o.E. App. Dec. 121)**

<i>In re Edward Schmidt</i>	:	
Warren & Carla Schmidt, Appellants,	:	
v.	:	
Iowa City Community School District, Appellee	:	DECISION [Adm. Doc. #4403]

The above-captioned matter was heard on October 9, 2001, before designated administrative law judge Susan E. Anderson, J.D. Appellants, Carla and Warren Schmidt, were present and were unrepresented by counsel. Appellee, Iowa City Community School District [hereinafter, “the District”], was present in the persons of Lane Plugge, superintendent; Jim Behle, associate superintendent; and Jerald Palmer, associate superintendent and board secretary. The District was also unrepresented by counsel.

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

Appellants seek reversal of a decision of the Board of Directors [hereinafter, “the Board”] of the District made on August 14, 2001, which denied, as a receiving district, their request for open enrollment application for their son, Edward, due to insufficient classroom space in the District’s junior high ESL program.

**I.
FINDINGS OF FACT**

Appellants and their family reside in the Clear Creek-Amana Community School District, close to its boundary with the Iowa City District. They adopted their son, Edward, on May 10, 2001. Edward arrived in this country from Russia on May 27, 2001. He is fourteen years old and has spoken only Russian until coming to the United States. Although he has not yet been tested for placement in a particular grade, his parents believe that he would probably be ready for seventh or eighth grade.

On August 10, 2001, the Schmidts filed for open enrollment with Clear Creek-Amana for Edward, listing the Iowa City District as the requested receiving district. The Clear Creek-Amana Board approved the application on August 13, as a sending district. On August 14, 2001, the Iowa City District Board denied the open enrollment application, as a receiving district, on the basis of insufficient space in its English-as-a-Second Language Program [“ESL”] at Northwest Junior High School.

The Schmidts sought open enrollment for the 2001-2002 school year for the following reasons, according to Mrs. Schmidt’s affidavit of appeal:

I wanted to enroll Edward in the Iowa City School District because he is a 14 year old boy adopted from Russia in May 2001 and requires English as a Second Language (ESL) curriculum. Our school district is Clear Creek Amana and they do not have an ESL curriculum. I have found limited resources for teaching a 14-year-old English except for the expense of a private tutor or enrolling him in an adult ESL language class through Kirkwood College. The class is free to anyone over 16 years but since he is not, we have to pay \$100 tuition to enroll him.

(Affidavit of Appeal.)

The Iowa City District has a written policy, which defines insufficient classroom space. It states:

Open Enrollment

The Iowa City Community School District shall participate in open Enrollment as required by state law based on district capacity.

The determination of sufficient space to accommodate open enrollment students in to the district shall be reviewed on a case-by-case basis. Criteria to be used by the district in its determination may include, but are not limited to, the following:

1. The relationship between effective building capacity and projected enrollments;
2. The financial resources of the school district;
3. The qualifications and number of certificated personnel;
4. Other factors deemed relevant to the situation.

...

(Bd. Policy 507, Exh. 1.)

For the last seven or eight years, the District has determined that there is insufficient classroom space in its ESL programs at the junior high level. Northwest Junior High School is the only junior high in the District to offer an ESL program. Northwest has a student population of 855 students, up from 663 in 1992.

The District submitted documentation showing that the ESL enrollment at Northwest Junior High has gone from 15 in 1997-98 to 37 in the 2001-2002 school year. The ESL Coordinator reported that the nationalities currently being served at Northwest for resident students are: Sudanese, Korean, Guatemalan, Mexican, Venezuelan, Georgian, Japanese, Kosovar, Chinese, Malaysian, Honduran, East Indian, Taiwanese, Vietnamese, Congolese, Colombian, and French/Republic of Congolese. She also reported that there is one student from the Republic of Georgia, but that his language is different from Russian.

The District's ESL program grades K-12 currently serves 200 students who speak 28 different languages. "The student population changes daily in Iowa City," according to the District due to the presence of the University of Iowa. In 1993, the ESL enrollment was about 150 students. There are 1.5 staff personnel assigned to the District's K-12 ESL program, including a recently added half-time position to accommodate the District's growing ESL resident population. The District testified that its ESL program has operated at a \$200,000 deficit for the past several years. The Board denied Edward's open enrollment application because of inadequate classroom space in its ESL program at Northwest Junior High. The Schmidts then appealed.

Edward currently is being homeschooled. He attends ESL classes at Kirkwood Community College with adults twice a week for three hours. The Clear Creek-Amana District has offered to provide one-on-one ESL assistance from one of its teachers who has ESL experience but whose teaching assignment is not ESL. The Schmidts do not like the Kirkwood Community College option because Edward is not with peers; they do not like the Clear Creek-Amana option because that District does not have an established ESL program.

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).

Iowa Code section 282.18(2)(2001) provides that a receiving district must enroll an open enrolled student “unless the receiving district does not have classroom space for the pupil.” Similarly, an Iowa Department of Education rule provides that “No receiving district shall be required to accept an open enrollment transfer request if it has insufficient classroom space to accommodate the pupil(s).” 281 IAC 17.6(2). The rationale behind this statute and rule is that a District’s first obligation is to its resident pupils. *In re Brie Hodges*, 15 D.o.E. App. Dec. 1 (1997); *In re Abigail Anne Legg*, 15 D.o.E. App. Dec. 200 (1998); *In re Ji Yoon Jeong*, 18 D.o.E. App. Dec. 7 (2000).

The open enrollment law and Department of Education rules require each school district to adopt a policy, which defines the term "insufficient classroom space" for that district. Iowa Code subsection 282.18(11)(2001); 281 IAC 17.6(3). 281 IAC 17.6(3) states that the “policy may include, but shall not be limited to, one or more of the following: nature of the educational program, grade level, available instructional staff, instructional method, physical space, pupil-teacher ratio, equipment and materials, facilities either being planned or under construction, facilities planned to be closed, finances available, sharing agreement in force or planned, bargaining agreement in force, law or rules governing special education class size, or board-adopted district educational goals and objectives.” The policy must be reviewed annually. 281 IAC 17.6(3).

Iowa Code section 280.4 (2001) provides, in pertinent part:

...When the student is limited English proficient, both public and nonpublic schools shall provide special instruction, which shall include but need not be limited to either instruction in English as a second language or transitional bilingual instruction until the student is fully English proficient or demonstrates a functional ability to speak, read, write, and understand the English language.

...

Id.

The Iowa City Board has determined for the past seven years that there is insufficient classroom space in the District’s ESL program. The program struggles to serve its own resident students who need to be in the ESL program. The ESL program has operated at a \$200,000 deficit for several years. The law provides that the Board makes the determination of insufficient classroom space based on the factors in the rules and the Board’s own policy, which include “finances available.” The Board has made the determination that there is insufficient classroom space in its ESL program for Edward or any other ESL student who wishes to open enroll into the District. The evidence presented by the District supports this determination.

The first issue presented in this appeal is whether the Board reasonably denied Edward's open enrollment application as a receiving district. The Board's determination that it will first look to the needs of its resident pupils is reasonable and is to be supported. Prior cases of the Department of Education called similar determinations "highly responsible." *In re Ji Yoon Jeong*, 18 D.o.E. App. Dec. 7 (2000); *In re Alida Congden*, 15 D.o.E. App. Dec. 169, 173 (1998); *In re Amanda J. Baker*, 12 D.o.E. App. Dec. 210, 212 (1995). The Board has applied its open enrollment/insufficient classroom space policy consistently. To allow the Schmidts to open enroll Edward into the District would violate the policy. The District correctly looked at the impact of not just Edward's application, but of all similarly situated applicants. We affirm the Board's determination that there is insufficient classroom space in the District's ESL program.

A second question is presented because Edward's parents believe it would be in his best interest to open enroll to Iowa City because of the English as a Second Language Program at Iowa City. Iowa Code section 282.18(18)(2001) provides that "Notwithstanding the general limitations contained in this section, in appeals to the state board from decisions of school boards relating to student transfers under open enrollment, the state board shall exercise broad discretion to achieve just and equitable results which are in the best interest of the affected child or children." *Id.*

The State Board does not often exercise the discretion contained in 282.18(18). It is important that the balancing of interests provided for in the open enrollment statute is followed in most cases. *In re Beth Randolph*, 15 D.o.E. App. Dec. 128 (1998). The State Board has viewed section 282.18(18) as "an award by the legislature of an extraordinary power to be used by the State Board sparingly," and to be used only in cases where "a child's unique situation cries out for state board intervention." *In re Paul Farmer*, 10 D.o.E. App. Dec. 299, 302 (1993).

If our only consideration were with regard to Edward himself, we might say that it would be in Edward's best interest to go to Iowa City because of its ESL program. However, Edward is not the only child involved. Iowa Code 282.18(18) directs the State Board to "achieve just and equitable results which are in the best interest of the affected child or children." In this case, the affected children are Edward and the resident students who attend the Iowa City Northwest Junior High School. We are sympathetic to the Schmidts' wishes and to Edward's needs. However, we must consider the needs of all the children who live in the District, not just what would be easiest or best for one child who does not live there. Northwest Junior High School's ESL program is overcrowded and operating at a deficit. It would not be in the best interest of the resident students of the District to allow even one nonresident student to enroll in the ESL program through open enrollment.

Given that we must consider the needs of all the students at Northwest Junior High School and in the District, we decline to exercise our discretion under Iowa Code section 282.18(18)(2001) to allow Edward to attend the Iowa City District. We see no error in the decision of the Board of the District. The Board's decision was consistent with state law, the rules of the Iowa Department of Education, and its own policy. Therefore, there are no grounds to justify reversing the District Board's denial of the open enrollment application for Edward.

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

III. DECISION

For the foregoing reasons, the decision of the Board of Directors of the Iowa City Community School District made on October 9, 2001, that denied Mr. and Mrs. Schmidt's open enrollment application for Edward, 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

CORINE HADLEY, PRESIDENT
STATE BOARD OF EDUCATION