

**IOWA STATE BOARD
OF EDUCATION
(Cite as 20 D.o.E. App. Dec. 74)**

<i>In re Samuel Stuelke</i>	:	
Dixon Stuelke,	:	
Appellant,	:	
v.	:	
	:	DECISION
Waterloo Community School District,	:	
Appellee.	:	[Adm. Doc. #4328]

The above-captioned matter was heard on April 25, 2001, before Susan E. Anderson, J.D., designated administrative law judge, presiding. Appellant Dixon Stuelke was present telephonically and was represented by Attorney Thomas Mayes of Legal Services Corporation of Waterloo. Appellee, Waterloo Community School District [hereinafter, “the District”], was present in the persons of Bernard Cooper, director of the Division of Student Services; and Sharon Miller, board secretary. Appellee 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 chapter 6. Authority and jurisdiction for this appeal are found in Iowa Code sections 282.18 and 290.1 (2001). The administrative law judge finds and she and the State Board of Education have jurisdiction over the parties and the subject matter of the appeal before them.

Appellant seeks reversal of a decision of the Board of Directors [hereinafter, “the Board”] of the District made on January 22, 2001, which denied his application for Samuel Stuelke’s open enrollment out of the District beginning in the 2001-2002 school year. The application was denied on the basis that the departure of this student from the District would have an adverse effect on the District’s desegregation plan.

**I.
FINDINGS OF FACT**

Dixon Stuelke resides within the Waterloo Community School District with his family, within the attendance zone for Longfellow Elementary School. Mr. Stuelke wants his son, Samuel [“Sam”], to attend kindergarten in the 2001-2002 school year at the University of Northern Iowa’s Price Laboratory School [hereinafter, “Price Lab”]. Price Lab is operated by the Iowa Board of Regents, under Iowa Code section 265.1, and is located wholly within the boundaries of the Cedar Falls Community School District.

Sam is a non-minority student whose birth date is July 6, 1995. Sam attended the Nursery Program at Price Lab during the 2000-2001 school year. During that year, although Sam was then five years old and was age-eligible to attend kindergarten, Mr. Stuelke made the decision to have Sam attend the prekindergarten program at Price Lab. Price Lab accepted Sam as a student in its nursery/kindergarten unit. Because Price Lab was not a party to the appeal, it is unknown from the record under what circumstances Price Lab agreed to enroll Sam in its Nursery Program. Sam's three older siblings also attend school at Price Lab.

At the conclusion of a contentious divorce, Mr. Stuelke was awarded custody of his children and moved from Waterloo to Cedar Falls in August of 1999. In Cedar Falls, the three older Stuelke children were able to enroll at Price Lab. In the spring of 2000, the family moved back to Waterloo, due to landlord problems and less expensive housing. The older Stuelke children continued at Price Lab under the "continuation" clause in the District's open enrollment policy. Mr. Stuelke timely filed an open enrollment application for Sam on December 7, 2000 because he wants Sam to attend kindergarten in the same school as his siblings. He also does not believe that Sam can favorably adjust to a different environment from the one to which he has become accustomed at Price Lab. In addition, Mr. Stuelke and his fiancée are students at UNI, where they have quick access to the children for transportation and emergencies. Mr. Stuelke checked the "yes" box to question 10 on the open enrollment application, which asks: "Is the request made due to the parent or guardian changing district of residence and desiring that the pupil remain in the original district with no interruption in the education program?"

On January 22, 2001, the District denied Mr. Stuelke's application after concluding that allowing Sam to open enroll out of the District would have an adverse impact on the District's desegregation plan.

For the appeal hearing, several educators at Price Lab wrote letters in favor of Sam's open enrollment application (Exh. 1, 2, and 4.) They noted that Sam is a child with risk factors, including poverty (Exh. 3) and divorced parents. The Price Lab professionals indicated in their letters that Sam's best interest required enrollment at Price Lab, identifying his family connections to Price Lab and continuity with his current educational programming and support systems. The principal of Price Lab wrote that separating Sam from his siblings "would place unneeded stress on the Stuelke family." (Exh. 4.) Ms. Barnes, Sam's teacher at Price Lab, stated that continued education at Price Lab "will help countermand" Sam's risk factors. (Exh. 1.) Mr. Stuelke did not provide this information to the District before it acted on Sam's open enrollment application. District personnel testified that this information would not have affected the decision to deny Sam's open enrollment for desegregation reasons. (Testimony of Mr. Cooper.)

Sharon Miller, board secretary, testified that the Board of Directors consistently applies the terms of its open enrollment policy and regulations to each fact situation that comes before it. When the Board denied Sam's application, there had been no evidence presented to it of any particular circumstances regarding Sam. Mr. Cooper and Ms. Miller testified at the appeal hearing that Waterloo also has services and personnel in place and on call to deal with Sam's

circumstances in a satisfactory way. Both Sharon Miller and Bernard Cooper testified that every family that applies believes strongly that open enrollment is in the best interest of their child for open enrollment.

Ms. Miller also testified for the District concerning the policies and procedures that were applied to Mr. Stuelke's open enrollment application for Sam. 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, which states, in pertinent part:

Maintaining the District's current racial characteristics is critical to its desegregation efforts, ability to comply with state guidelines on minority/non-minority 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. (See Administrative Regulation 501.12-R2)

...

Students whose families move to the Waterloo Community School District who request continuous open enrollment in their previous district of residence will not be held to the criteria identified above regarding the District's racial characteristics. In accordance with the Iowa Code, they will be granted Board approval under the provisions for continuous open enrollment.

(Board Policy 501.12, 1999, reviewed 1999.)

The Board's Administrative Regulation 501.12-R details the guidelines that are 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 non-minority 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.

Guideline 4 states:

Applications for open enrollment out of the District will not be granted if it is found that the release of the pupil(s) requesting to do so will adversely affect the district's existing minority/non-minority ratio. Each fall, a composite ratio shall be developed by Student Services based on the

numbers of minority and non-minority students enrolled in the District on the official enrollment count. If non-minority students apply to transfer out of the District in greater numbers than the ratio established for the year, non-minority students allowed to transfer will be chosen as follows:

- a. Applications of siblings of previously approved students will be given first priority. Students from this group will be approved in the order in which their siblings were previously approved.
- b. All other applications will be placed on a list in the order in which the applications were filed with the District. Applications will be granted in the order in which they appear on the list. If one member of a family is selected through this selection process, the names of all other family members on the list shall be placed directly under the name of the first family member selected.

The District's statistics for purposes of implementing the open enrollment policy regarding applications for the 2001-2002 school year show a minority enrollment of 32.1 percent for the District as a whole. Longfellow Elementary School's minority enrollment is 71.3%, which is much higher than the District-wide ratio of 32.1%.

The District presented evidence that its minority to non-minority ratio for the District as a whole during the 2000-2001 school year was 32.1%/67.9% or .473. There were 11 eligible minority applicants and 54 eligible non-minority applicants, for a total of 65 applicants. The ratio of minority to non-minority applicants was .203, less than the .473 ratio for the District. The .203 ratio means that for every minority student approved for open enrollment out of the District, two non-minority students can be approved out. All 11 eligible minority students were approved. The number of non-minority students approved was 24 of the 54 applications. Ms. Sharon Miller, board secretary, testified that the waiting list of remaining eligible non-minority students was approximately 30. As one minority student is approved in subsequent kindergarten or good cause applications, roughly two non-minority students can move off the waiting list for approval.

Mr. Stuelke argues that the District's denial of Sam's open enrollment application should be reversed for the following five reasons:

1. Appellee failed to exercise the discretion conferred upon it by Iowa's Open Enrollment statute.
2. Samuel Stuelke qualifies for "continuous enrollment" under Iowa's Open Enrollment statute.
3. The District's decision failed to consider other important interests.
4. The Iowa Administrative Code section on Lab School Enrollment governs this appeal.
5. The Open Enrollment statute denies Samuel Stuelke equal protection of the laws.

II. CONCLUSIONS OF LAW

This appeal presents an issue of first impression to the State Board of Education: whether an age-eligible student who has attended a pre-kindergarten program at a laboratory school can use the continuation provisions of the open enrollment law to remain at the laboratory school. We conclude that the answer is “yes” for the following reasons.

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).

This appeal involves several provisions of Iowa's Open Enrollment Law. Iowa Code section 282.18(1) 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.

For the school year commencing July 1, 1989, and each succeeding school year, a parent or guardian residing in a school district may enroll the parent's or guardian's child in a public school in another school district in the manner provided in this section.

Id.

Iowa Code section 282.18(9)(2001) states, in pertinent part, as follows:

If a request to transfer is due to a change in family residence, change in the state in which the family residence is located, a change in a child's parents' marital status, a guardianship proceeding, placement in foster care, adoption, participation in a foreign exchange program, or participation in a substance abuse or mental health treatment program,

and the child, who is the subject of the request, is not currently using any provision of open enrollment, the parent or guardian of the child shall have the option to have the child remain in the child's original district of residence under open enrollment with no interruption in the child's educational program. ...

Id.

An Iowa Department of Education rule provides that a parent exercising the continuation option "shall file an open enrollment request form with the new district of residence for processing and recording purposes. This request shall be made on or before the third Thursday of the following September. Timely requests under this rule shall not be denied." 281 Iowa Administrative Code 17.8(7).

Iowa Code section 282.18(15)(2001) states, in pertinent part:

If a request under this section is for transfer to a laboratory school, as described in chapter 265, the student, who is the subject of the request, shall not be included in the basic enrollment of the student's district of residence, and shall report the enrollment of the student directly to the department of education, unless the number of students from the district attending the laboratory school during the current school year, as a result of open enrollment under this section, exceeds the number of students enrolled in the laboratory school from that district during the 1989-1990 school year.

Id.

Iowa Code section 265.1(2001) defines a "laboratory school" as follows:

The state board of regents is authorized to establish and operate elementary and secondary laboratory schools at the institutions of higher education under its control. For the purpose of this chapter, laboratory school shall mean a school operated by an educational institution for the purpose of instructing students, training teachers, and advancing teaching methods.

Id.

In the 1992 Legislative Session, the Open Enrollment statute was amended to give the State Board authority to set aside statutory limitations on open enrollment when to do so would serve the best interest of the child.

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.

1992 Iowa Acts, Ch. 1135, §5; Iowa Code §282.18(18)(2001). "This statutory amendment has been viewed by the State Board as a discretionary exercise of the State Board's power of appellate review to be applied judiciously whenever a child's unique situation cries out for State Board intervention. We see it as an opportunity to recognize a form of "good cause" the Legislature was unable to envision, not unwilling to envision." *In re Cameron Kroemer*, 9 D.o.E. App. Dec. 302, 307-08(1992).

While not a "district," we conclude that Price Lab School is a "public school" to which a student may transfer under the open enrollment law. Iowa Code section 265.1(2001); *see also*, Iowa Code section 257.6(f)(2001). Iowa Code subsection 282.18(15)(2001) provides for a request under this section for transfer to a laboratory school. We also conclude that the continuation provision in 282.18(9)(2001) applies to students who want to continue attending a laboratory school after a change in the family residence.¹

In our recent decision, *In re Colby Miller*, 20 D.o.E. App. Dec. 1(2001), the State Board of Education stated, "We conclude that the open enrollment law does include kindergarten preparatory programs for age-eligible students." *Id.* at 4. In the appeal now before us, Sam Stuelke was age-eligible when he attended Price Lab's Nursery/Kindergarten program during the 2000-2001 school year and could have used the open enrollment law. The Waterloo District's Policy 501.12 provides that students who request continuous enrollment in their previous district of residence will be granted approval regardless of the desegregation policies relating to open enrollment.

This is the first time these circumstances have been addressed by the State Board. In three recent cases, however, the State Board has used its subsection 18 power to allow requests for open enrollment to continue attending a school when the student had been attending the school, under mistaken residency, for a number of years. *See, e.g., In re Kassidi Todd*, 17 D.o.E. App. Dec. 136 (1999); *In re Nicolas Wayne Martin* and *In re Mark Ball*, 16 D.o.E. App. Dec. 230 (1998); *In re Elizabeth, Jennifer, and Alberto Landeros*, 16 D.o.E. App. Dec. 172 (1998).

In the present case, Mr. Stuelke (by not filing his open enrollment application for Sam until after the continuation deadline), and perhaps Price Lab (by agreeing to accept Sam in the first place when he had moved to the Waterloo District), did not meet the letter of the law. But, to deny Mr. Stuelke's request to continue Sam's education in a laboratory school which Sam

1 An exception to this conclusion occurs where a family moves *into* the local school district in which the laboratory school is located. *See*, discussion of Iowa Code section 282.18(15) in *In re Phoenix Safford*, 20 D.o.E. App. Dec. 11(2001). That exception does not apply here.

attended as an age-eligible student in good faith for the entire 2000-2001 school year would be

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contrary to Sam's best interest. It would also be contrary to the spirit of Iowa Code sections 282.18(9) and (10), which seek to avoid "interruption in the child's educational program". *Id.* The Legislature did not condition this "option" upon the filing of an open enrollment application by January 1. The State Board's rules provide that a notice of continuation should be filed with the new district of residence "for processing and record purposes". 281 IAC 17.8(7).

For these reasons, it is recommended that the State Board of Education exercise its subsection (18) power to allow Sam Stuelke to remain at the Price Laboratory School to continue his education. Because we are deciding this appeal on the continuation issue only, we will not address Mr. Stuelke's other four arguments. We emphasize that this decision is strictly limited to the facts in this case, where there is an age-eligible student who in good faith began nursery school at a laboratory school and seeks to continue his education there through open enrollment.

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

III. DECISION

For the foregoing reasons, the decision of the Waterloo Community School District's Board of Directors made on January 22, 2001, denying the open enrollment application for Samuel Stuelke, is hereby recommended for reversal. There are no costs to be assigned.

DATE

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

IT IS SO ORDERED.

DATE

CORINE HADLEY, PRESIDENT
IOWA STATE BOARD OF EDUCATION