

**Iowa State Board  
of Education**  
(Cite as 20 D.o.E. App. Dec. 64)

***In re Leah Haak***

Jessica Whitten, Appellant,	:	
	:	
v.	:	DECISION
	:	
Des Moines Independent Community School District,	:	
Appellee.	:	[Adm. Doc.# 4392]

The above-captioned matter was heard telephonically on August 15, 2001, before Susan E. Anderson, J.D., designated administrative law judge, presiding. Sharron Stocker, Leah Haak's grandmother, represented Appellant Jessica Whitten. Ms. Stocker was present telephonically and unrepresented by counsel. Appellee, Des Moines Independent Community School District [hereinafter "the District"] was present telephonically in the person of Dr. Thomas Jeschke, Executive 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 this 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.

Appellant seeks reversal of a decision of the Board of Directors [hereinafter "the Board"] of the District made on July 10, 2001, which denied her open enrollment application for Leah Haak out of the District beginning in the 2001-2002 school year. The application was denied on the basis that the departure of Leah Haak from the District would have an adverse effect on the District's desegregation plan.

**I.  
Findings of Fact**

Leah Haak ["Leah"], a non-minority student who resides in the District, will enter second grade for the 2001-2002 school year. Leah's assigned attendance center is Oak Park Elementary School. Her mother, Jessica Whitten, applied for open enrollment to Saydel for the following reasons: Jessica Whitten resides with her family in the Des Moines District. They want to live in Saydel, but have not been able to locate a suitable house in Saydel. Ms. Stocker, Leah's grandmother, resides in the Saydel

District and she takes care of Leah before and after school. Ms. Whitten wants Leah to attend school in Saydel because there is a Saydel bus stop 300 feet from Ms. Stocker's house. Leah could, therefore, conveniently ride the bus between Saydel School and Ms. Stocker's house.

Ms. Stocker also provides daycare for two of her other grandchildren, both of whom are two years old. She has undergone major surgery recently and has lifting restrictions related to health problems. If Leah is not allowed to open enroll to Saydel, Ms. Stocker would have to transport Leah to and from Oak Park. She would have to get the two toddlers in and out of the car twice a day. Due to a shortage of cars, Ms. Stocker also transports her own daughter to and from work. She is worried that Leah would be tardy to school since her daughter has to be at work prior to the time that the school day starts.

On June 22, 2001, Ms. Whitten filed an application for Leah to open enroll out of the Des Moines District for the 2001-2002 school year. The family moved from Ankeny to Des Moines on June 26, 2001. Dr. Jeschke testified that the application was considered timely filed under the good cause exception due to the change in residence. Ms. Whitten's application for open enrollment was denied on July 10, 2001, 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.

Dr. Jeschke testified that the District's Metro childcare program could provide before- and after-school care for Leah at Oak Park so that Leah's mother could take her to school before work. It would not then be necessary for Ms. Stocker to transport Leah at all. Dr. Jeschke stated that although the District sympathizes with the family's difficulties, there are many families in the District who have similar problems. Dr. Jeschke testified that the District's childcare program would cost \$46.00 per week for care before and after school. Ms. Stocker responded that the family could not afford that. Dr. Jeschke responded that she could pursue the possibility that the District might waive part or all of the fees if the family qualified for a waiver. He gave Ms. Stocker the telephone number of the District office that she could contact.

Dr. Jeschke further 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 2000-2001 school year is 28.3 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 43 percent or greater this year is closed to open enrollment for next year. The buildings closed to open enrollment for the 2001-2002 school year are Adams, Edmunds, King, Perkins, Longfellow, Lovejoy, Madison, McKinley, Moulton, Wallace, Callanan, 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 28.3 percent of the District's students were minorities, the composite ratio was 1:2.53. This means that for every minority student who open enrolls out of the District for 2001-2002, 2.53 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 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, 2000, and January 1, 2001, the District received 104 open enrollment applications. For the 2000-2001 school year, 8 minority students applied for open enrollment and were approved. Using the composite ratio of 1:2.53, the District determined that 20 non-minority students would be approved for open enrollment ( $8 \times 2.53 = 20.4$ ). Of the 96 non-minority applicants, 24 were determined to be ineligible because they were assigned to a building closed to open enrollment. This left 72 applicants for 20 seats. Five of these were approved under the sibling preference portion of the policy, resulting in 15 remaining slots and 67 applicants.

The remaining applicants were placed in numerical order according to a random number program and the first 15 were approved. The remainder were denied and placed on a waiting list that will be used only for the 2001-2002 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. Since January 1, 2001, 51 additional open enrollment applications have been filed. Leah is currently 89<sup>th</sup> on the waiting list of 103.

The District Board determined that the departure of Leah Haak would adversely affect the District's composite ratio of minority to non-minority students. The Board denied Mrs. Whitten's application on July 10, 2001. She appealed to the State Board of Education.

## II. Conclusions of Law

Two important interests conflict in this case: 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

68

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."

Ms. Whitten has valid reasons for requesting open enrollment. She is genuinely interested in what is best for Leah and her family and she is 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 she could open enroll Leah as requested, as long as the application was 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

69

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 this case. Therefore, the Board's decision to deny Ms. Whitten's application was 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 decision of the Board of Directors of the Des Moines Independent Community School District, made on July 10, 2001, denying the open enrollment application for Leah Haak, is hereby recommended for affirmance. There are no costs of this appeal to be assigned.

\_\_\_\_\_  
DATE

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

\_\_\_\_\_  
DATE

CORINE HADLEY, PRESIDENT  
STATE BOARD OF EDUCATION