

IOWA STATE BOARD
OF EDUCATION
(Cite as 20 D.o.E. App. Dec. 21)

In re Alec North :

Virginia North, :
Appellant, :

v. : DECISION

Waterloo Community School :
District, :
Appellee. : [Admin Doc. #4361]

The above-captioned matter was heard telephonically on June 27, 2001, before Susan E. Anderson, J.D., designated administrative law judge, presiding. Appellant Virginia North was present telephonically and was unrepresented by counsel. Appellee, Waterloo Community School District [hereinafter, "the District"], was present telephonically in the person of Sharon Miller, board secretary. 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 April 23, 2001, which denied her application for open enrollment for her son, Alec North, beginning in the 2001-2002 school year.

**I.
FINDINGS OF FACT**

Virginia North is the mother of Alec North ("Alec"). He will be a kindergarten student during the 2001-2002 school year. The North family resides within the Irving Elementary School attendance area of the Waterloo Community School District. Ms. North filed the open enrollment application in February 2001 for Alec to attend school in the Cedar Falls District because she is planning to move there sometime in the future.

Alec is a biracial child of white and black ancestry. The open enrollment form provided by the Iowa Department of Education does not have a racial category of biracial, multiracial, or other. The form also does not have categories of minority or non-minority. The choices available to Ms. North were "White/Not Hispanic" or "Black/Not Hispanic". Ms. North marked both boxes and added, "Mother is white/father is black." After the application was filed, the District

called Ms. North and told her that she had to choose one box or the other before it could act on the application. Ms. North then crossed out the “black” box and circled the “white” box.

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Sharon Miller, board secretary, testified for the District concerning the policies and procedures that were applied to Ms. North’s open enrollment application for Alec. 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.

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/nonminority ratio. Each fall, a composite ratio shall be developed by Student Services based on the numbers of minority and nonminority students enrolled in the District on the official enrollment count. If nonminority students apply to transfer out of the District in greater numbers than the ratio established for the year, nonminority 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.

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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. Those same statistics show the percentage of minority students at Irving Elementary to be 21.7 percent. Alec was eligible to leave Irving Elementary because that building's minority enrollment was not more than 5% above the District's minority enrollment.

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. Alec is currently on the waiting list of remaining eligible nonminority students. 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.

Ms. Miller testified that the District accepts the parent's designation of race on the open enrollment form. Ms. North objects to the District's refusal to allow her to classify her son as she chooses. Her affidavit of appeal states, in pertinent part, as follows:

I feel that my son had to be denied part of his heritage so as to fit into someone's statistics. He is a biracial child and he should be proud of that not to be someone he is not. I do realize there needs to be opportunities for minorities, and I also realize there need to be guidelines and limitations. However, my son is a minority as well and even so, I think it is incredibly unfair to any child or parent to have to pick only part of themselves to receive a good education. It is a great disservice to any family. There should be an option on any enrollment form for all kinds of ethnic backgrounds. Black or white simply is not what this world consists of solely. If nothing else comes from this appeal, other than making the school systems realize each child should be seen as an individual and given a chance to be educated as such.

The District denied Ms. North's request for open enrollment at the Board meeting on April 23, 2001. The District's reasoning was that if Alec is regarded as a white or nonminority student, he would be allowed to exit Irving under the building-specific part of the District's desegregation plan, but that he still could not exit the District under the composite ratio part of the desegregation plan.¹ Ms. North then filed this appeal.

¹ The District's evidence at the appeal hearing showed that if Ms. North had marked the "Black/not Hispanic" box on the open enrollment application form, he still would not have been allowed to open enroll out of the District because Irving Elementary was closed to open enrollment out by minority students.

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 Alec 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.²

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 Ms. North could

² 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.

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

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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 Alec North's open enrollment application. 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. In this particular case, even if Alec were considered "Black/Not Hispanic," he would not be allowed out of the District because of the percentage of minority students in his attendance center. We are aware of Ms. North's concerns that the open enrollment application form does not have a "biracial" box for a parent to choose. The Department will take her concerns under consideration if it revises the form in the future.

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 April 23, 2001, denying the open enrollment application for Alec North, 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