

**IOWA STATE BOARD  
OF EDUCATION  
(Cite as 19 D.o.E. App. Dec. 301)**

---

*In re Cole Foster* :  
Michael & Brandy Foster, Appellants, :  
v. : DECISION  
Burlington Community School District, :  
Appellee. [Adm. Doc. # 4332]  
:

---

The above-captioned matter was heard on April 25, 2001, before Susan E. Anderson, J.D., designated administrative law judge. Appellants, Brandy and Michael Foster, were present telephonically, and were unrepresented by counsel. Appellee, Burlington Community School District [hereinafter, "the District"], was present telephonically in the persons of Stephen Swanson, superintendent; and Larry McBeth, Director of Instruction & Educational Programs. The District was represented by Ann Tompkins of Gruhn Law Firm of Cedar Rapids, Iowa.

An evidentiary hearing was held pursuant to department rules found at 281 Iowa Administrative Code 6. Authority and jurisdiction for the 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 of this appeal.

Appellants seek reversal of a decision of the Board of Directors [hereinafter, "the Board"] of the District made on February 1, 2001, that denied the open enrollment application for their son, Cole Foster, beginning in the 2001-2002 school year.

**I.  
FINDINGS OF FACT**

Appellants reside in the Burlington School District. Cole Foster is a non-minority student and will enter kindergarten in the 2001-2002 school year. He has been attending preschool in the District. His parents applied for open enrollment for him to the Danville Community School District for the following reasons: The subdivision where the Fosters reside is 4/10<sup>th</sup> of a mile from the boundary between the Burlington and Danville districts. If Cole attends the elementary school assigned by the District, he would be on the bus approximately 38 minutes each way. If he were to attend school in the Danville District, he would spend about the same amount of time on the bus, but the Fosters testified that they could drive him there themselves in about 10 minutes. The

Fosters also attend church in Danville and have made friendships there. Cole is, therefore, already acquainted with many of the students, teachers and staff at the Danville school.

The Fosters filed timely an open enrollment application for their son, Cole Foster, for the 2001-2002 school year. The Fosters' application for open enrollment was denied on February 1, 2001, because the District determined that the departure of this student would have an adverse affect on the District's desegregation plan.

**The District:**

The Burlington Community School District has a formally adopted desegregation plan, Board Policy 105.1; a formally adopted open enrollment policy, Board Policy 105; and formally adopted administrative procedures to implement the desegregation plan and the open enrollment policy, Board Policy 105R. The open enrollment policy prohibits granting open enrollment when the transfer would have "a negative effect on the racial balance of the district established in support of the District's Desegregation Plan." The policy and the procedures contain objective criteria that the District uses to determine whether a request for transfer would adversely affect the desegregation plan and to prioritize those deemed not to have an adverse impact. Board Policy 105R states:

Open Enrollment – Standard Program transfers at any level (elementary, middle, or high school) may not cause an alteration to the District-wide Composite Ratio of minority to nonminority students. Applications for all students requesting a transfer out of the District will be denied if the release of the student (minority or non-minority) will adversely affect the District's 'Composite Ratio.

*Id.* The procedures describe the District's random selection process to determine which students will be approved if more non-minority students apply for open enrollment than can be allowed out according to the composite ratio. The procedures also describe the Board's policy of giving preference to siblings of students already open enrolled out of the District as follows:

*Sibling Preference* is a District policy that is used in both the Voluntary Transfer Program and Open Enrollment to ensure, to the extent possible and subject to parental request, that children in the same nuclear family receive their education in the same school and/or school district of preference.

This priority may result in exceptions to the District's Desegregation Plan.

*Id.*

The District also sends a letter to all parents who have completed open enrollment applications which states, in pertinent part:

For each minority student that open enrolls out of the district, seven non-minority students are also permitted to open enroll out of the district. However, there is an exception to this. Board policy states that all students requesting open enrollment out who have siblings already attending other school districts from prior years and who are first year eligible, be permitted to leave regardless of the ratio. The rationale for that decision is based upon the strong feeling of the Board that it is crucial to keep children in the same family together.

*Id.* (Emphasis in original.)

Mr. McBeth, director of instruction and educational programs, testified that the District's minority enrollment for the 2000-2001 school year was 15% and the non-minority enrollment was 85%, resulting in a composite ratio of 1:7. This means that for every minority student who open enrolls out of the District for 2000-2001, seven non-minority students would be approved to leave. Two minority students and 26 non-minority students originally applied for open enrollment for the 2001-2002 school year. The two minority students were approved out. Four non-minority students qualified under the sibling preference policy and were approved to open enroll out of the District. The remaining 22 applications, including the Appellants', were entered into a random selection process on January 25, 2001. Fourteen of the 22 applications were approved after the random selection process. The Fosters' application was not one of those approved. They are on the resulting waiting list of eight applications that were denied because they exceeded the 1:7 composite ratio. The denials occurred at the January 25, 2001, Board meeting.<sup>1</sup>

## 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 section 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

---

<sup>1</sup> Since the February 1 meeting, one additional minority student has applied to open enroll out of the District. This will allow seven additional non-minority students a chance to be approved out in a second random selection process, which will occur sometime during the first part of June 2001.

construed broadly to maximize parental choice and access to educational opportunities which are not available to children because of where they live." *Id.*

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." *Id.*

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." *Id.*

In this case, the parents have valid reasons for requesting open enrollment. They are genuinely interested in what is best for their child and are seeking to obtain it by filing for open enrollment. If the Burlington District did not have a desegregation plan, there is no question that these parents could open enroll their child as requested, so 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 the desegregation plan as required by Iowa Code section 282.18(12) (2001). The policy also includes a provision for maintaining a district-wide ratio of minority to non-minority students (Bd. Policy 105R). The District's policy is similar to that of the Des Moines Independent Community School District. The Des Moines District's open enrollment policy was 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 district-wide composite ratio. That right also applies to the Burlington Board.

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--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.

(*In re Jesse Bachman*, 13 D.o.E. App. Dec. 363.)

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 the Fosters' open enrollment application for Cole. The facts also show that the Board's denial was consistent with the law and its own policy. Therefore, the Board's decision to deny this application was reasonable.

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

### **III. DECISION**

For the foregoing reasons, the decision of the Board of Directors of the Burlington Community School District made on February 1, 2001, that denied the open enrollment request for Cole Foster for the 2001-2002 school year, 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