

**IOWA STATE BOARD
OF EDUCATION
(Cite as 19 D.o.E. App. Dec.295)**

In re Bailee Williams

Richard Williams, Appellant,	:	
v.	:	DECISION
Waterloo Community School	:	
District, Appellee.	:	[Adm. Doc.# 4325]

The above-captioned matter was heard telephonically on April 24, 2001, before Susan E. Anderson, J.D., designated administrative law judge, presiding. Appellant Richard Williams was present telephonically and was unrepresented by counsel. Appellee, Waterloo Community School District [hereinafter, "the District"], was present telephonically in the persons of Bernard Cooper, director of student services; and 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 January 22, 2001, which denied his application for open enrollment for his daughter, Bailee Williams, beginning in the 2001-2002 school year.

**I.
FINDINGS OF FACT**

Appellant Richard Williams is the father of Bailee Williams, a nonminority student. She will be a kindergarten student during the 2001-2002 school year. The Williams family resides within the Black Hawk Elementary School attendance area of the Waterloo Community School District. Bailee is currently attending the University of Northern Iowa ["UNI"] Price Laboratory ["Price Lab"] Nursery School in Cedar Rapids, Iowa. Mr. Williams filed the open enrollment application in October 2000 for the following reasons. Bailee's father is a professor at UNI and works across the street from Price Lab. He has been conveniently able to volunteer at Bailee's nursery school. The Williams want Bailee to continue in kindergarten in the environment to which she has adjusted. Mr.

Williams testified that at Price Lab, Bailee would have access to Spanish classes, daily physical education classes, drama classes, a full-time counselor and a speech pathologist.

Sharon Miller, board secretary, testified for the District concerning the policies and procedures that were applied to Mr. Williams' open enrollment application for Bailee. 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.

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 Black Hawk Elementary to be 17.8 percent. Bailee was eligible to leave Black Hawk 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. 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.

Bailee is currently on the District's waiting list. Mr. Williams' open enrollment application was denied on January 22, 2001. Mr. Williams then filed this appeal.

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 Bailee 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.¹

¹ 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.

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 Mr. Williams could open enroll Bailee, 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.

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.

Mr. Williams argues, however, that the District's Guideline 4 of Regulation 501.12-R is unfair to parents of kindergartners who timely file their applications before the September deadline and who assume that they should have an equal chance to be approved as any other timely filed application. The District's testimony during the appeal hearing makes it clear that applications are placed on the waiting list in chronological order, based on the date on which each was submitted. It is also clear that this practice is advantageous to those who apply early and detrimental to those who do not.

In a previous decision, *In re Jennifer Stock*, 17 D.o.E. App. Dec. 333 (1999), the State Board made the following recommendation to the District:

... [T]o be fair to all applicants in the future, we strongly urge the District to discontinue the practice of listing applicants according to the date on which the applications were received. We recommend assigning a random number to each and

listing applicants numerically according to those numbers.

Id. at 339.

This is the first time since the *Stock* decision that the State Board has been presented with an argument on appeal that the waiting list for Waterloo's desegregation policy is unfair because it is not random. The District has not followed the State Board's recommendation. We will not reverse the District in the present case because we can find no authority that requires the waiting lists to be random. We do, however, continue to make the recommendation that the waiting lists be random. Although neither chronological nor random lists are perfect solutions, we believe that a random list can provide every timely-filed application with an equal chance of being selected.

We conclude that the Board reasonably applied its current policies and regulations to the facts of Bailee William's open enrollment application. The family's motives for applying for open enrollment have never been considered by the Board or by the Department of Education as reasons to override a district's desegregation policy.

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 January 22, 2001, denying the open enrollment application for Bailee Williams, 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