

Iowa State Board
of Education

(Cite as 19 D.o.E. App. Dec. 271)

***In re Codie Johnson, Alyssa Wolf,
Haley Urness, Alex Wilson, Jordan
Bowen, Jessica Shields, Kathryn
Foster, Bailey Lane & Ian Taylor***

Candee Johnson, Venice Wolf, Kara :
Urness, Angela Wilson, Cindy Bowen,
Thomas & Yolanda Shields, Kerri
Foster, Teresa Lane-Agan, & Robert
Taylor, Appellants, :

v. : DECISION

Des Moines Independent Community : [Adm. Doc.#s 4316, 4304, 4305,
School District, : 4306, 4307, 4327, 4330, 4331,
Appellee. : & 4338]

The above-captioned matters were consolidated and were heard on March 30, 2001, before Susan E. Anderson, J.D., designated administrative law judge, presiding. The following Appellants were present and unrepresented by counsel: Candee Johnson, Brian and Venice Wolf, John and Kara Urness, Wade and Angela Wilson, Jacob and Cindy Bowen, Thomas and Yolanda Shields, Roger and Kerri Foster, Teresa Lane-Agan, and Robert Taylor. Appellee, Des Moines Independent Community School District [hereinafter "the District"] was present 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 the appeals 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 consolidated appeals before them.

Appellants seek reversal of decisions of the Board of Directors [hereinafter "the Board"] of the District made on January 23, February 6, and February 20, 2001, which denied their applications for open enrollment out of the District beginning in the 2001-2002 school year. The applications were denied on the basis that the departure of these students from the District would have an adverse effect on the District's desegregation plan.

I.
Findings of Fact

All Appellants filed timely applications for their non-minority children to open enroll out of the Des Moines District for the 2001-2002 school year, during which all of the children will be kindergartners.

In re Codie Johnson:

Codie Johnson, a non-minority student, will enter kindergarten for the 2001-2002 school year. His assigned attendance center is Oak Park Elementary School. His mother, Candee Johnson, applied for open enrollment to Johnston for the following reasons: The family is planning to move to Johnston sometime during the next year and they do not want Codie to have to attend two different schools for kindergarten. Codie has attended a day care in Johnston for four and one-half years. The Johnsons are concerned about Codie's having to make the emotional and social adjustments to a different kindergarten class after they move.

Dr. Jeschke stated that at the point when the Johnsons have an accepted offer on property in Johnston, the Des Moines District would immediately approve Codie's open enrollment application into the Johnston District.

The Johnsons' application for open enrollment was denied on January 23, 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.

In re Alyssa Wolf:

Alyssa Wolf, a non-minority student, will enter kindergarten for the 2001-2002 school year. Her assigned attendance center is Pleasant Hill Elementary School. Her parents, Brian and Venice Wolf, applied for open enrollment to Southeast Polk for the following reasons: They plan to move their family to the Southeast Polk District sometime during the next year. Mrs. Wolf's mother lives in the Southeast Polk District and has provided day care for Alyssa since she was six weeks old. The bus stops in front of her home. The Wolfs live two blocks from the Southeast Polk District boundary line.

Dr. Jeschke stated that at the point when Mr. and Mrs. Wolf have an accepted offer on property in the Southeast Polk District, the Des Moines District would immediately approve Alyssa's open enrollment application.

The Wolfs' application for open enrollment was denied on January 23, 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.

In re Haley Urness:

Haley Urness, a non-minority student, will enter kindergarten for the 2001-2002 school year. Her assigned attendance center is Findley Elementary School. John and Kara Urness, her parents, applied for open enrollment to Ankeny for the following reasons: They plan to move there sometime during the next year. Haley has attended the same day care for three years in Ankeny. The day care will provide transportation to and from school if Haley attends in Ankeny. Ms. Urness has worked for the Ankeny Community School District for the past 14 years.

Dr. Jeschke stated that at the point when the Urnesses have an accepted offer on property in Ankeny, the Des Moines District would immediately approve Haley's open enrollment application into the Ankeny District.

The Urnesses' application for open enrollment was denied on January 23, 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.

In re Alex Wilson:

Alex Wilson, a non-minority student, will enter kindergarten for the 2001-2002 school year. His assigned attendance center is Moore Elementary School. His parents, Wade and Angela Wilson, applied for open enrollment to Urbandale for the following reasons: Alex was born with hydrocephalus and the Wilsons did extensive research into day care facilities before selecting Koality Time Too in Urbandale. Alex has attended Koality Time Too for almost three years and they have been very satisfied with the care Alex receives. The Wilsons testified that the staff at Koality Time Too is trained in how to handle any emergencies that arise with Alex's condition. The day care provides transportation to Urbandale, Johnston, and Clive schools, but not to any Des Moines District schools. Their residence is located too close (within three blocks) to Moore Elementary to receive free transportation for Alex from the Des Moines District. Dr. Jeschke stated Moore Elementary does have before- and after-school day care available.

The Wilsons' application for open enrollment was denied on January 23, 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.

In re Jordan Bowen:

Jordan Bowen, a non-minority student, will enter kindergarten for the 2001-2002 school year. Her assigned attendance center is Hillis Elementary School. Her parents, Jacob and Cindy Bowen, applied for open enrollment to West Des Moines for the following reasons: The Bowens moved from Clive to Des Moines approximately four and one-half years ago. Jordan's older sister, Alisha, is currently open enrolled to West Des Moines and has been for six years.

The Bowens do not want to split the siblings into two different school districts. Their application for open enrollment was denied on January 23, 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 stated that the District had been unaware that Jordan had an older sibling who was open enrolled out of the District. He asked the Bowens where they had obtained their open enrollment application packet. Mrs. Bowen testified that she had received it from the West Des Moines District. Dr. Jeschke explained that all open enrollment packets from the Des Moines District contain a Sibling Preference sheet, on which a parent may indicate whether a student has a sibling who has been granted open enrollment out of the District.

Dr. Jeschke stated at the appeal hearing that because of the Sibling Preference section of the District's Desegregation Plan and because the Bowens filed their application before January 1, 2001, Jordan will be placed at the top of the waiting list and approved immediately if and when another minority student is granted open enrollment. The Sibling Preference policy was applied to Jordan because Hillis Elementary building is not closed to open enrollment for the 2001-2002 school year.

In re Jessica Shields:

Jessica Shields, a non-minority student, will enter kindergarten for the 2001-2002 school year. Her assigned attendance center is Rice Elementary School. Her parents, Thomas

and Yolanda Shields, applied for open enrollment to Johnston for the following reasons: The Shields plan to move to Johnston in the near future. Mr. Shields has worked in Johnston for the past ten years, and Mrs. Shields works in Norwalk. Jessica has attended day care in Johnston for two years.

The Shields' application for open enrollment was denied on January 23, 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.

In re Kathryn Foster:

Kathryn Foster, a non-minority student, will enter kindergarten for the 2001-2002 school year. Her assigned attendance center is Willard Elementary School. Her parents, Roger and Kerri Foster, applied for open enrollment after January 1, but met the deadline requirements for kindergarten students. The Fosters applied for open enrollment to Southeast Polk for the following reasons: The Fosters have another daughter, Cheyenne, who is open enrolled out of the District and attends Southeast Polk as a tenth-grade student.

The Fosters' application for open enrollment was denied on January 23, 2001, because the District determined that the departure of this student would adversely affect the composite ratio of the District as a whole.

Dr. Jeschke stated at the appeal hearing that the District had been unaware that the Fosters had an older sibling who was open enrolled out of the District. He stated that because of the Sibling Preference section of the District's Desegregation Plan, if the Fosters had filed their application before January 1, 2001, Kathryn would have been automatically approved. The Fosters filed the application after January 1. She will now be placed at the top of the waiting list and approved immediately if and when another minority student is granted open enrollment. The Sibling Preference policy applies to Kathryn because Willard Elementary building is not closed to open enrollment for the 2001-2002 school year.

In re Bailey Lane:

Bailey Lane, a non-minority student, will enter kindergarten for the 2001-2002 school year. His assigned attendance center is Moore Elementary School. His mother, Teresa Lane-Agan, applied for open enrollment to Johnston for the following reasons: Ms. Lane-Agan lives one block from the boundary of the Johnston District. Bailey has attended the same day care located in

Johnston for the past two years. Ms. Lane-Agan is currently in dissolution proceedings with Bailey's step-father and will be a single parent. She expressed concerns regarding Bailey's emotional stability due to the divorce and fears he will have adjustment problems to new surroundings and friends.

Ms. Lane-Agan's application for open enrollment was denied on January 23, 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.

In re Ian Taylor:

Ian Taylor, a non-minority student, will enter kindergarten for the 2001-2002 school year. His assigned attendance center is Douglas Elementary School. His father, Robert Taylor, and his maternal grandmother, Delores Mooers, attended the appeal hearing.

The Taylors applied for open enrollment to Southeast Polk for the following reasons: The family residence is only four miles from Altoona. Ian has attended a day care in Altoona for approximately three and one-half years. His grandmother, Ms. Mooers, also resides in Altoona and has agreed to care for Ian as an emergency backup if the parents have to work late. Ms. Mooers took care of Ian for the first 18 months of his life and she expressed concern about the difficulty Ian may experience if he has to change friends and day care facilities.

The Taylors' application for open enrollment was filed after January 1 but met the deadline for kindergarten students. It was denied on January 23, 2000, 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.

The District:

Dr. Jeschke 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 2001-2002 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. 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.

The District Board determined that the departure of Appellants' children, all of whom are on the waiting list, would adversely affect the District's desegregation plan. The Board denied their applications on January 23, 2001; February 6, 2001; or February 20, 2001.

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 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."

Appellants have valid reasons for requesting open enrollment. They are genuinely interested in what is best for their children and are 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 Appellants could open enroll their children as requested, as long as the applications were 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 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 any individual student's case. Therefore, the Board's decisions to deny these applications were 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 decisions of the Board of Directors of the Des Moines Independent Community School District, made on January 23, 2001; February 6, 2001; and February 20, 2001, denying the open enrollment applications for the Appellants' children, are hereby recommended for affirmance. There are no costs of this appeal to be assigned.

5-14-2001

DATE

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

6-7-2001

DATE

Corine A. Hadley
CORINE HADLEY, PRESIDENT
STATE BOARD OF EDUCATION