

**Iowa State Board
of Education**
(Cite as 19 D.o.E. App. Dec. 262)

***In re Andrew & Adam Logan, Bryan & :
Rachel Lippincott, Briana Bianchi,
Richard Bennett Jr., & Erica
Jarnagin :***

David Logan, Keith & Barb Lippin-
Cott, Rhonda Bianchi, Richard
Bennett Sr., & Brandy Stephen, :
Appellants, :

v. : DECISION

Des Moines Independent Community : [Adm. Doc. #s 4317, 4319, 4309,
School District, : 4323, & 4329]
Appellee. :

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: David Logan, Keith and Barb Lippincott, Rhonda Bianchi, Richard Bennett, Sr. and Brandy Stephen. 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, 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

Notices of Hearing were sent by the Department of Education to all Appellants, including Ms. Leslie Boyd, by certified mail, return receipt requested. The Department has a return receipt card showing service of the Notice of Hearing on Ms. Boyd. Because she did not appear, her appeal is dismissed.

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.

In re Erica Jarnagin:

Erica Jarnagin, a non-minority student, will enter sixth grade for the 2001-2002 school year. Her assigned attendance center is Harding Junior High School. Her mother, Brandy Stephen, applied for open enrollment to Southeast Polk for the following reasons: The family would like to move to the Southeast Polk District sometime during the next year. Erica's grandmother provides day care for Erica and resides in the Southeast Polk District. Ms. Stephen's extended family all attended Southeast Polk and she would like Erica to continue the tradition. Erica would have few friends at Harding.

Dr. Jeschke said that at the point when Ms. Stephen has an accepted offer on property in the Southeast Polk District, the Des Moines District would immediately approve Erica's open enrollment application.

Ms. Stephen's application for open enrollment 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.

In re Andrew & Adam Logan:

Andrew and Adam Logan, non-minority students, will enter fifth and second grades, respectively, for the 2001-2002 school year. Their assigned attendance center is Hillis Elementary School. Their parents, David and Rose Logan, applied for open enrollment to Urbandale for the following reasons: They would like their children to attend smaller classes and feel the Des Moines District focuses on minority students and talented and gifted students, but not on the average student. Mr. Logan testified that he believes that student achievement and quality of education is higher in the Urbandale District. He also cited

Iowa Code section 282.18 and emphasized that parental choice should prevail in open enrollment decisions. Mr. Logan argued that the District's desegregation plan is reverse discrimination and is in violation of the Equal Protection Clause.

Dr. Jeschke stated that the Des Moines District has more merit scholars than the entire state of Minnesota and that the Des Moines District provides students with a wide variety of topics and areas in which to achieve at all levels.

The Logans' applications for open enrollment were denied on January 23, 2001, because the District determined that the departure of these students would adversely affect the composite ratio of minority to non-minority students for the District as a whole.

In re Bryan & Rachel Lippincott:

Bryan and Rachel Lippincott, non-minority students, will enter sixth grade and eighth grade, respectively, for the 2001-2002 school year. Their assigned attendance center is Meredith Middle School. Their father, Keith Lippincott, applied for open enrollment to Johnston for the following reasons: They live 150 feet within the boundaries of the Des Moines District. Mr. Lippincott works in the Johnston Community School District and would like the children to attend there so he can be close at hand in case of an emergency. The Lippincotts believe that the class sizes are too large in the Des Moines District and that more educational opportunities are available to the children in the Johnston District.

Dr. Jeschke testified that the Des Moines District has several educational opportunities that other districts do not. In fact, other districts participate in the Des Moines District's Central Academy program to allow their students more educational opportunities.

The Lippincotts' applications for open enrollment were denied on January 23, 2001, because the District determined that the departure of these students would adversely affect the composite ratio of minority to non-minority students for the District as a whole.

In re Briana Bianchi:

Briana Bianchi, a non-minority student, will enter ninth grade for the 2001-2002 school year. Her assigned attendance center is North High School. Her mother, Rhonda Bianchi, applied

for open enrollment to Southeast Polk for the following reasons: Briana's older siblings have attended Southeast Polk for the past six years.

Ms. Bianchi testified that no sibling preference form was filled out because it had not been provided to her. She has a son who is a senior and a daughter who is currently in tenth grade at Southeast Polk. Mrs. Bianchi does not want to split the siblings into two different school districts.

Mrs. Bianchi'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.

Dr. Jeschke stated that the District had been unaware that Briana had older siblings who were open-enrolled out of the District. He explained that all open enrollment packets from the Des Moines District contain a Sibling Preference sheet, on which the parent may indicate if 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 Mrs. Bianchi filed her application before January 1, 2001, Briana will be placed at the top of the waiting list and approved immediately if and when another minority student is granted open enrollment.

In re Richard Bennett, Jr.:

Richard Bennett, Jr., a non-minority student, will enter ninth grade for the 2001-2002 school year. His assigned attendance center is Hoover High School. His father, Richard Bennett, Sr., applied for open enrollment to Urbandale for the following reasons: Richard currently attends Dowling High School, a nonpublic school. Richard wants to attend Urbandale High School because he has friends with mutual musical interests who attend Urbandale. Mr. Bennett believes that Richard's departure from Dowling High School would not affect the District's desegregation plan.

Mr. Bennett'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.

Dr. Jeschke testified that the ratio is computed using the previous year's enrollment figures. He explained that Richard's departure would affect next year's ratio, because he resides in the Des Moines District and has to enroll in the District in order to request open enrollment out.

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 2001-2002 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.

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). One of the Appellants argues that a student who has attended private school cannot impact the District's desegregation plan. Two previous State Board decisions have decided that such a student does have a negative impact on the desegregation plan. *In re David Early*, 8 D.o.E. App. Dec. 206, 213-214 (1991); *In re Matthew Mitchell, et al.*, 16 D.o.E. App. Dec. 27, 37 (1998). "The District uses the entire student population in an attendance area, not just students who actually attend, to make planning and staffing decisions." *Id.*

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, denying the open enrollment applications for 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 Hadley
CORINE HADLEY, PRESIDENT
STATE BOARD OF EDUCATION