

**IOWA STATE BOARD
OF EDUCATION
(Cite as 19 D.o.E. App. Dec. 121)**

<i>In re Riley Gardner</i>	:	
Rebecca Gardner, Appellant,	:	
v.	:	PROPOSED DECISION
Waterloo Community School District, Appellee.	:	[Adm. Doc. #4272]

The above-captioned matter was heard telephonically on October 11, 2000, before Susan E. Anderson, J.D., designated administrative law judge, presiding. Appellant, Rebecca Gardner, was present telephonically and was unrepresented by counsel. Appellee, Waterloo Community School District [hereinafter, "the District"], was also present in the person of Sharon Miller, board secretary. The District was represented by Attorney Steven Weidner of the 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(1999). 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 July 17, 2000, which denied her application for open enrollment for her son, Riley Gardner, beginning in the 2000-2001 school year.

**I.
FINDINGS OF FACT**

Riley Gardner is currently a kindergartner attending Kittrell Elementary School in the Waterloo Community School District. Rebecca Gardner is Riley's mother. They moved to the District in June of 2000 from Cedar Falls. Ms. Gardner applied for open enrollment for Riley to attend the Price Laboratory School at the University of Northern Iowa in Cedar Falls, Iowa.

Ms. Gardner designated Riley's minority status as Black/Not Hispanic on the open enrollment application. She testified that Riley is of mixed heritage since she is white. Ms. Gardner testified that she sought open enrollment for Riley because she is concerned that the District may not have a high graduation rate for black males. She is also concerned that the District may not

be able to meet Riley's special needs. These needs possibly include observed inattentiveness, disruptiveness and speech pathology.

Ms. Sharon Miller, board secretary, testified on behalf of the District that she would set up a meeting to address Riley's needs as soon as possible. The meeting will include the District's Director of Student Services, Kittrell's Principal, Riley's classroom teacher and Ms. Gardner. She also testified that the District is working on early intervention programs to help black males stay in school.

Ms. Miller testified for the District concerning the policies and procedures that were applied to Ms. Gardner's open enrollment application for Riley. According to the District's consistently applied practice, the application, since it was filed after the January 1 general deadline, but before the June 30 kindergarten deadline, was collected and held with all other timely filed kindergarten applications after January 1 and considered by the Board of Directors at its July 17, 2000, meeting.¹

The District has an open enrollment/desegregation policy. The Board's policy on open enrollment 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

¹ The Legislative change to the deadline for filing kindergarten applications had not yet been introduced into the policy or regulations as of the Board's action on July 17, 2000.

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 2000-2001 school year show the a minority enrollment of 32.1 percent. Those same statistics show the percentage of minority students at Kittrell Elementary to be 23.9 percent. Riley's designated attendance center is Kittrell School. The Board denied the application because Riley would be a minority student attending a school with a minority enrollment that is at least 5 percent less (actually 8.2 percent less) than the District's percentage as a whole.

Ms. Gardner then appealed to the State Board of Education.

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)(1999)], "in the best interest of the affected child or children" [Iowa Code section 282.18(18)(1999)], 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 Riley was based on specific provisions of Iowa's Open Enrollment Law.

Iowa Code section 282.18(3)(1999) 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)(1999) 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, then, 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 plan, there is no question that the Ms. Gardner could open enroll Riley, 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 would be approved or denied.

Board Policy 501.12 and Regulation 501.12-R2 were, 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 in that decision as to the building ratio portion in view of the District's voluntary desegregation plan as contemplated by Iowa Code section 282.18. That finding by the Department of Education was 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 policies and regulations to the facts of Riley Gardner'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 the building ratio restrictions in the past.

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

² This language clearly contemplates two separate documents, a desegregation plan and a policy implementing the plan. The District should immediately take steps to adopt a separate district document as its plan instead of referring to the district court's decision and subsequent Board of Education decisions.

**III.
DECISION**

For the reasons stated above, the decision of the Board of Directors of the Waterloo Community School District made on July 17, 2000, denying the open enrollment application for Riley Gardner, 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