

of Education
(Cite as 19 D.o.E. App. Dec. 7)

<i>In re Ji Yoon Jeong</i>	:	
Siyoung Jeong,	:	
Appellant,	:	
v.	:	PROPOSED DECISION
Ames Community School	:	
District,	:	
Appellee	:	[Adm. Doc. #4237]

The above-captioned matter was heard on June 28, 2000, before designated administrative law judge Susan E. Anderson, J.D. Appellant, Siyoung Jeong, was present and was unrepresented by counsel. Appellee, Ames Community School District [hereinafter, “the District”], was present in the persons of Ray Richardson, deputy superintendent; and Gayle Isaac, board secretary. The District was represented by Mr. Ron Peeler, of Ahlers, Cooney, Dorweiler, Haynie, Smith & Allbee, P.C., of Des Moines, Iowa.

An evidentiary hearing was held pursuant to Departmental Rules found at 281 Iowa Administrative Code 6. Authority and jurisdiction for the appeal are found in 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 of the appeal before them.

Appellant seeks reversal of a decision of the Board of Directors [hereinafter, “the Board”] of the District made on April 10, 2000, which denied his request for open enrollment for his daughter, Ji Yoon Jeong, due to insufficient classroom space in the District’s middle school.

I.
FINDINGS OF FACT

The preponderance of the evidence from the record in the appeal hearing showed the following facts.

Appellant, Siyoung, and his family reside in the United Community School District. His daughter, Ji Yoon, had completed her sixth-grade year there. Mr. Jeong is an associate professor at Sogang University in Seoul, Korea. He is spending a year conducting research at Iowa State University. The entire Jeong family will return to Korea by the end of February 2001.

Mr. Joeng sought open enrollment for Ji Yoon to the Ames District for the 2000-2001 school year for the following reasons:

- 1) Ames Middle school is much closer to their residence than United High School. Ames Middle school is 15 minutes' walking distance from the Joengs' home, but Ji Yoon would have to ride more than 15 miles every day if she attends seventh grade in the United Community School District.
- 2) Mr. Jeong testified that Ji Yoon gets carsick easily and if she can go to school on foot, she will become much healthier.
- 3) Mr. Joeng also testified that Ji Yoon would have more friends at Ames Middle School. Because she does not speak English well and has difficulty in making friends, she sometimes feels isolated at school. There are some Korean students at Ames Middle School and they would be a great help for Ji Yoon.
- 4) Mr. Jeong testified that Ames Middle School has a better English-as-a-Second-Language program.

Mr. Jeong filed his application for open enrollment on March 24, 2000. The United Community School District approved it on March 28, 2000. The Ames District denied the application as the receiving district on April 10, 2000, because of insufficient classroom space in its middle school. Ji Yoon will be entering the seventh grade. Ames Middle School is comprised of seventh and eighth grades.

The Ames District has a written policy, which defines insufficient classroom space. It states: "Insufficient classroom space exists when conditions adversely affect the implementation of the educational philosophy and program of the district. The Board shall determine insufficient classroom space on a case-by-case basis. Criteria to be used by the Board in its determination may include, but not be limited to, available personnel, grade level, educational program, instructional method, physical space, available equipment and materials, available finances, facilities either being planned or currently under construction, sharing agreements in force, bargaining agreements in force, and district goals and objectives."

Each year since November 1990, the Board of Directors has declared that there is insufficient classroom space at the middle and high school levels, and has not permitted students to open enroll into the middle and high schools. On November 15, 1999, the Board again declared that there was insufficient classroom space at the middle and high school levels. Therefore, grades 7 through 12 were closed to open enrollment into the District for the 2000-2001 school year. The District had an enrollment of 782 on the official count date this year at the middle school. Last year, the middle school enrollment was 785. The middle school was designed for between 500 and 600 students. Mr. Richardson testified

both the middle school and high school are extremely overcrowded, although the middle school is more overcrowded than the high school. The District has constructed several temporary classrooms at the middle school. This added to the capacity of the middle school, although the District did not have a specific capacity number for the middle school other than the 500-600 figure.

The overcrowding problem is particularly acute in the middle school hallways during passing time and when serving lunch. The middle school also has an insufficient number of student bathrooms. There is insufficient room in the media center, which has made it necessary to move some computers into classrooms. A bond issue to build a new middle school failed in 1990. The District currently has a committee looking at long-range facility plans, and would like to build a new middle school. Mr. Richardson testified that recently a one-cent sales tax proposal failed to pass. On October 19, 2000, the District is voting again on the sales tax proposal. However, there are no immediate plans to build a new middle school, and there is no chance additional construction would alleviate the insufficient classroom space for the 2000-2001 school year. The Board therefore denied Mr. Jeong's request for open enrollment based on insufficient classroom space at the April 10, 2000, meeting.

II. CONCLUSIONS OF LAW

Iowa Code section 282.18(2)(1999) provides that a receiving district must enroll an open enrolled student "unless the receiving district does not have classroom space for the pupil." Similarly, an Iowa Department of Education rule provides that "No receiving district shall be required to accept an open enrollment transfer request if it has insufficient classroom space to accommodate the pupil(s)." 281 IAC 17.6(2). The rationale behind this statute and rule is that a District's first obligation is to its resident pupils. *In re Brie Hodges*, 15 D.o.E. App. Dec. 1 (1997); *In re Abigail Anne Legg*, 15 D.o.E. App. Dec. 200 (1998).

The open enrollment law and Department of Education rules require each school district to adopt a policy, which defines the term "insufficient classroom space" for that district. Iowa Code subsection 282.18(11)(1999); 281 IAC 17.6(3). 281 IAC 17.6(3) states that the "policy may include, but shall not be limited to, one or more of the following: nature of the educational program, grade level, available instructional staff, instructional method, physical space, pupil-teacher ratio, equipment and materials, facilities either being planned or under construction, facilities planned to be closed,

finances available, sharing agreement in force or planned, bargaining agreement in force, law or rules governing special education class size, or board-adopted district educational goals and objectives.” The policy must be reviewed annually. 281 IAC 17.6(3).

The Board has determined for every year since 1990 that there is insufficient classroom space at the middle school. The fact that enrollment is dropping does not necessarily mean that the building can adequately house the students who attend now, or the number who will be attending in the future. Addition of temporary classrooms does not necessarily increase the total building capacity or make a declaration of insufficient classroom space wrong when hallways, lunchrooms, and bathrooms remain as originally designed for 500-600 students. The law provides that the Board makes the determination of insufficient classroom space based on the factors in the rules and the Board’s own policy. The Board has done this, and the evidence presented by the District supports this determination.

The Board’s determination that it will first look to the needs of its resident pupils is reasonable and is to be supported. Prior cases of the Department of Education called similar determinations “highly responsible”. *In re Alida Congden*, 15 D.o.E. App. Dec. 169, 173 (1998); *In re Amanda J. Baker*, 12 D.o.E. App. Dec. 210, 212 (1995). The Board applied its open enrollment/insufficient classroom space policy consistently, and to allow Mr. Jeong to open enroll Ji Yoon into the District would violate the policy. Although the addition of only Ji Yoon might not make much difference, the District cannot allow one student to open enroll and deny all others. The District correctly looked at the impact of not just Ji Yoon’s application, but of all similarly situated applicants. We affirm the Board’s determination that there is insufficient classroom space in the secondary schools.

A second question is presented because Ji Yoon’s parents believe it would be in her best interest to open enroll to Ames because of the English as a Second Language Program at Ames and because of her carsickness. Iowa Code section 282.18(18)(1999) provides that “Notwithstanding the general limitations contained in this section, in appeals to the state board from decisions of school boards relating to student transfers under open enrollment, the state board shall exercise broad discretion to achieve just and equitable results which are in the best interest of the affected child or children.”

The State Board does not exercise the discretion contained in 282.18(18) often. It is important that the balancing of interests provided for in the open enrollment statute is followed in most cases. *In re Beth Randolph*, 15 D.o.E. App. Dec. 128 (1998). The State Board has viewed section 282.18(18) as “an award by the legislature of an extraordinary power to be used by the State Board sparingly”, and to be used only in cases where “a child’s unique situation cries out for state board intervention.” *In re Paul Farmer*, 10 D.o.E. App. Dec. 299, 302 (1993).

If our only consideration were with regard to Ji Yoon herself, we might say that it would be in Ji Yoon's best interest to go to Ames because of its ESL program. However, Ji Yoon is not the only child involved. Iowa Code 282.18(18) directs the State Board to "achieve just and equitable results which are in the best interest of the affected child or children." In this case, the affected children are Ji Yoon and the resident students who attend the Ames Middle School. We are sympathetic to Mr. Jeong's wishes and Ji Yoon's needs. However, we must consider the needs of all the children who live in the District, not just what would be easiest or best for one child who does not live there. The middle school is overcrowded. It would not be in the best interest of the resident students of the District to allow even more students to enroll at the middle school, making it even more crowded.

Given that we must consider the needs of all the students at the middle school, we decline to exercise our discretion under Iowa Code section 282.18(18)(1999) to allow Ji Yoon to attend the Ames middle school. We see no error in the decision of the Board of the District. The Board's decision was consistent with state law, the rules of the Iowa Department of Education, and its own policy. Therefore, there are no grounds to justify reversing the District Board's denial of the open enrollment application for Ji Yoon.

All motions or objections not previously ruled upon are hereby denied and overruled.

III. DECISION

For the foregoing reasons, the decision of the Board of Directors of the Ames Community School District made on April 10, 2000, which denied Mr. Jeong's application for open enrollment for Ji Yoon, 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