

**Iowa State Board
of Education**
(Cite as 18 D.o.E. App. Dec. 351)

In re Jessica Martin,

Kelly Martin, Appellant,	:	
	:	DECISION
v.		
Des Moines Independent Community School District,	:	
Appellee.	:	[Adm. Doc. #4232]

The above-captioned matter was heard on June 1, 2000, before Susan E. Anderson, J.D., designated administrative law judge. Appellant, Kelly Martin, was present and unrepresented by counsel. 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 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 March 14, 2000, which denied her open enrollment application out of the District for her daughter, Jessica Martin, beginning in the 2000-2001 school year. The application was denied on the basis that the departure of this student from the District would have an adverse effect on the District's desegregation plan.

**I.
Findings of Fact**

Appellant filed a timely application for her child to open enroll out of the Des Moines District for the 2000-2001 school year. Jessica Martin, a non-minority, will enter kindergarten for the 2000-2001 school year. Her assigned attendance center is Oak Park Elementary School. Her mother, Kelly Martin, applied for open enrollment to Saydel for the following reasons: The Martins are planning to move to Saydel sometime during the next year and they do not want Jessica to have to attend two different schools for kindergarten. The Martins are concerned about the

reading program at Oak Park Elementary, but have sought no specific information about that program. The Martins' home in Des Moines has not yet been placed on the market, and they have not yet made an offer on property in Saydel.

Dr. Jeschke said that at the point when the Martins have an accepted offer on property in Saydel, the Des Moines District would immediately approve Jessica's open enrollment application into the Saydel District. Dr. Jeschke also assured Mrs. Martin that the reading program at Oak Park Elementary is a good one and invited her to meet with teachers there to discuss it.

The Martins' application for open enrollment was denied on March 14, 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:

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 1999-2000 school year is 27.3 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 42 percent or greater this year is closed to open enrollment for next year. The buildings closed to open enrollment for the 2000-2001 school year are Edmunds, Findley, King, Perkins, Longfellow, Lovejoy, McKinley, Moulton, Wallace, Harding, and Hiatt.

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 27.3 percent of the District's students were minorities, the composite ratio was 1:2.66. This means that for every minority student who open enrolls out of the District for 1999-2000, 2.66 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 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, 1999, and January 1, 2000, the District received 109 open enrollment applications. For the 2000-2001 school year, 17 minority students applied for open enrollment. Using the composite ratio of 1:2.66, the District determined that 45 non-minority students would be approved for open enrollment ($17 \times 2.66 = 45.22$). Of the 92 non-minority applicants, 8 were determined to be ineligible because they were assigned to a building closed to open enrollment. This left 84 applicants for 45 seats. Nine of these were approved under the sibling preference portion of the policy, resulting in 38 slots and 77 applicants. The remaining applicants were placed in numerical order according to a random number program and the first 38 were approved. The remainder were denied and placed on a waiting list that will be used only for the 2000-2001 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 Jessica Martin, who is on the waiting list, would adversely affect the District's desegregation plan. The Board denied the Martins' open enrollment application on March 14, 2000.

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)(1999) 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)(1999) 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)(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 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."

In this case, the parents have valid reasons for requesting open enrollment. They are genuinely interested in what is best for their child 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 these parents could

open enroll their child as requested, as long as their application was 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) (1999). 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 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 Jessica Martin's case. Therefore, the Board's decision to deny this application was 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 decision of the Board of Directors of the Des Moines Independent Community School District, made on March 14, 2000, denying the open enrollment application for Jessica Martin, is hereby recommended for affirmance. There are no costs of this appeal to be assigned.

DATE

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

DATE

CORINE HADLEY, PRESIDENT
STATE BOARD OF EDUCATION