

**Iowa State Board
of Education**
(Cite as 18 D.o.E. App. Dec. 280)

***In re Brett Lawson, Reid Lefler,
Canyon Petersen, & Monica Cunningham***

Robert & Cathleen Lawson, Becky	:	
Lefler, Dan & Robyn Petersen, &	:	
Michelle Cunningham, Appellants,	:	
	:	PROPOSED
v.	:	DECISION
Des Moines Independent Community	:	
School District,	:	
Appellee.	:	

The above-captioned matters were consolidated and were heard on March 29, 2000, before a hearing panel comprised of Dr. Tom Andersen and Mr. Jim Tyson, consultants, Bureau of Administration and School Improvement Services; and Susan E. Anderson, J.D., designated administrative law judge, presiding. The following Appellants were present and unrepresented by counsel: Robert and Cathleen Lawson, Becky Lefler, Dan and Robyn Petersen, and Michelle Cunningham. Appellants Kris Lancaster and Jennifer Castle did not appear at the hearing. 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(1999). 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 18, February 1, February 15, and March 14, 2000, which denied their applications for open enrollment out of the District beginning in the 2000-2001 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 Kris Lancaster and Jennifer Castle, by certified mail, return receipt requested. The Department has a return receipt card showing service of the Notice of Hearing on Ms. Lancaster and Ms. Castle. Because they did not appear at the hearing, did not send a representative and did not move for a continuance, the appeals of Kris Lancaster and Jennifer Castle were dismissed on March 31, 2000.

All Appellants filed timely applications for their children to open enroll out of the Des Moines District for the 2000-2001 school year.

In re Brett Lawson:

Brett Lawson, a non-minority, will enter kindergarten for the 2000-2001 school year. His assigned attendance center is Wallace Elementary School. His parents, Cathleen and Robert Lawson, applied for open enrollment to Urbandale for the following reasons: The Lawsons are planning to move to Urbandale sometime during the next year and they do not want Brett to have to attend two different schools for kindergarten. They also have made day care arrangements in Urbandale. Mr. Lawson works on the outskirts of Urbandale. The Urbandale Community School District offers an all-day kindergarten program that is not available at Wallace Elementary School. The Lawsons are concerned about Brett's having to make the social adjustment to a different kindergarten class after they move.

Dr. Jeschke said that at the point when the Lawsons have an accepted offer on property in Urbandale, the Des Moines District would immediately approve Brett's open enrollment application into the Urbandale District.

The Lawsons' application for open enrollment was denied on March 14, 2000, because Wallace Elementary School is closed to open enrollment, and non-minority students are not allowed to transfer from the school under the District's open enrollment/desegregation policy.

In re Reid Tiffany Lefler:

Reid Tiffany Lefler, a non-minority, will enter kindergarten for the 2000-2001 school year. Her assigned attendance center is Windsor Elementary School. Her mother, Becky Lefler, applied for open enrollment to Johnston for the following reasons: She plans to move her family to Johnston sometime during the next year. Ms. Lefler works in Ankeny and the Johnston area is much closer

to her place of employment. Reid currently attends day care in Clive. Ms. Lefler is trying to reduce the emotional adjustments that her daughter would need to make if she were to attend kindergarten in two districts. The Johnston Community School District has summer day care programs and before- and after-school care programs that Ms. Lefler needs.

Dr. Jeschke said that at the point when Ms. Lefler has an accepted offer on property in Johnston, the Des Moines District would immediately approve Reid's open enrollment application into the Johnston District.

Ms. Lefler's application for open enrollment was denied on January 18, 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 Canyon Petersen:

Canyon Petersen, a non-minority, will enter kindergarten for the 2000-2001 school year. His assigned attendance center is Rice Elementary School. Dan and Robyn Petersen, his parents, applied for open enrollment to Urbandale for the following reasons: They plan to move there sometime during the next one or two years. The Petersens do not want Canyon to have to adjust to elementary schools in two different school districts. They also have made arrangements for day care with Canyon's grandmother who lives in Urbandale. The Petersens have made arrangements for transporting Canyon to and from his grandmother's to the Urbandale Elementary School.

Dr. Jeschke said that at the point when the Petersens have an accepted offer on property in Urbandale, the Des Moines District would immediately approve Canyon's open enrollment application into the Urbandale District.

The Petersens' application for open enrollment was denied on February 15, 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 Monica Cunningham:

Monica Cunningham, a non-minority, will enter kindergarten for the 2000-2001 school year. Her assigned attendance center is Moore Elementary School. Michelle Cunningham, her mother, applied for open enrollment to Johnston for the following reasons: Monica's ten-year-old sister, Ambrosia, is currently open-

enrolled to the Johnston Community School District and is attending fourth grade there. Ambrosia resides with her mother and Monica in Des Moines. Ms. Cunningham has established day care for the girls in Johnston and does not want to split the siblings into two different school districts.

Ms. Cunningham's application for open enrollment was denied on February 1, 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.

Dr. Jeschke stated at the appeal hearing that because of the Sibling Preference section of the District's Desegregation Plan, if Ms. Cunningham had filed her application before January 1, 2000, Monica would have been automatically approved. However, since it was filed on January 11, 2000, the District will now place Monica's name at the top of the waiting list because of the Sibling Preference Policy. This policy was applied because Moore Elementary building is not closed to open enrollment for the 2000-2001 school year.

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 ($13 \times 2.66 = 45.22$). 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 the Applicants' children, all of whom are on the waiting list, would adversely affect the District's desegregation plan. The Board denied their applications on January 18, 2000; February 15, 2000; and 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 these cases, the parents 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 these parents 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) (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 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 18, 2000; February 1, 2000; February 15,

2000; and March 14, 2000, denying the open enrollment applications for the Appellants' children, are 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