Iowa State Board
of Education
(Cite as 18 D.o.E. App. Dec. 270)

In re Brian Porter
In re Nathaniel Thomas

Vicki Porter and Michael & Rebecca Thomas, Appellants,	:	
v.	:	DECISION
Des Moines Independent Community School District, Appellee.	:	[Adm. Doc. #s 4207 & 4214]

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: Michael and Rebecca Thomas; and Vicki Porter. 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 and February 1, 2000, which denied their applications for open enrollment out of the District beginning in the 2000-2001 school year. Ms. Porter's application was denied on January 18, 2000, on the basis that the departure of this student from the District would have an adverse effect on the District's desegregation plan. Mr. and Ms. Thomas' application for their son, Nathaniel, was denied on February 1, 2000, on the basis that it was filed late without good cause.

I.
Findings of Fact

Notices of Hearing were sent by the Department of Education to all Appellants, including Pamela Murphy and Jeff Wheeler, by certified mail, return receipt requested. The Department has a return receipt card showing service of the Notice of Hearing on Ms. Murphy and Mr. Wheeler. Both of these Appellants requested dismissal of their appeals prior to the hearing on March 29, 2000, and their appeals were dismissed on March 31, 2000.

In re Brian Porter:

Brian Porter, a non-minority, will enter ninth grade in the 2000-2001 school year. His mother, Vicki Porter, applied for open enrollment to Urbandale for the following reasons: Ms. Porter and Brian share a residence with her sister in the Des Moines District, but it is located very close to the Urbandale boundary. Ms. Porter works at the Hy-Vee Food Store in Urbandale. She plans for Brian to begin part-time work there next year. Brian has been attending Mt. Olive Lutheran School from second grade through eighth grade. All of Brian's friends who also attend Mt. Olive Lutheran School are going to attend the Urbandale Community School District in the ninth grade. Urbandale's class sizes are smaller and Ms. Porter believes it will be an easier adjustment for Brian to make between private and public school because of the class size and because of the fact that his friends will attend Urbandale. Ms. Porter and her siblings attended Urbandale and she wants Brian to carry on that tradition.

Ms. Porter'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.

Ms. Porter argues that this denial constitutes a violation of Brian's constitutional Equal Protection Rights. She believes it is unfair that all minority students' open enrollment applications with the District this year were granted, but that some of the non-minority students in the District, including Brian, were denied open enrollment due to the District's desegregation/open enrollment policy and are currently on the waiting list.

In re Nathaniel Thomas:

Nathaniel Thomas, a non-minority, will enter the eighth grade for the 2000-2001 school year. Michael and Rebecca Thomas,

his parents, applied for open enrollment to Johnston for the following reasons: The family plans to move to Johnston some time during the next year. Nathan has been homeschooled since kindergarten. His parents feel that Nathaniel will adjust better socially to the Johnston Community Schools than to the Des Moines District schools. The parents stated that they didn't know about the January 1 deadline for open enrollment and did not make the final decision to seek open enrollment until after January 1, 2000. They therefore filed their application on January 24, 2000, which was after the deadline.

Dr. Jeschke testified that the District publishes the open enrollment deadlines and that the Thomas family also should have received a copy of those deadlines in the newsletter that is sent from the Des Moines District to its patrons who are homeschooling their children. Mrs. Thomas testified that she receives a newsletter from the District that includes various deadlines, but that she does not specifically remember reading about the open enrollment deadlines. The District was not able to locate a copy of the newsletter. Dr. Jeschke testified, however, that the District publishes its open enrollment deadlines as required by law.

The Thomas' application for open enrollment was denied on February 1, 2000, because the District determined that their application was filed after the January 1 deadline without good cause.

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 x 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 Brian Porter, who is now on the waiting list, would adversely affect the District's desegregation plan. The Board denied Ms. Porter's application on January 18, 2000.

The District Board determined that Nathaniel Thomas' application for open enrollment was filed late without good cause. The District followed its policy of denying all late-filed applications where there was no statutory good cause shown. The Board denied the Thomas' application on February 1,2000.

II.
CONCLUSIONS OF LAW

In re Brian Porter:

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."

Ms. Porter has valid reasons for requesting open enrollment. She is genuinely interested in what is best for Brian and is 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 Ms. Porter could open enroll Brian, as long as the 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 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).

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 decision to deny Ms. Porter's application was reasonable and in the best interest of education.

In re Nathaniel Thomas:

The open enrollment law was written to allow parents to maximize educational opportunities for their children. Iowa Code §282.18(1)(1999). However, in order to take advantage of the opportunity, the law requires that parents follow certain minimal requirements. These include filing the application for open enrollment by January 1st of the preceding school year, unless they have good cause for the late filing or the student will be in kindergarten the following year. Iowa Code §282.18(2)(1999).

The legislature recognized that certain events would prevent a parent from meeting the January 1 deadline. Therefore, there is an exception in the statute for two groups of late filers: the parents or guardians of children who will enroll in kindergarten the next year, and parents or guardians of children who have good cause for missing the January 1 filing deadline. Iowa Code §§282.18(2) and (16)(1999).

The legislature has defined the term good cause rather than leaving it up to parents or school boards to determine. The statutory definition of good cause addresses two types of situations that must occur after the January 1 deadline. That provision states that good cause means:

> a change in a child's residence due to a change in family residence, a change in the state in which the family residence is located, a change in a child's parents' marital status, a guardianship proceeding, placement in foster care, adoption, participation in a foreign exchange program, or

> participation in a substance abuse or mental health treatment program, or a similar set of circumstances consistent with the definition of good cause; a change in the status of a child's resident district, such as removal of accreditation by the state board, surrender of accreditation, or permanent closure of a nonpublic school, the failure of negotiations for a whole-grade sharing, reorganization, dissolution agreement, or the rejection of a current whole-grade sharing agreement, or reorganization plan, or a similar set of circumstances consistent with the definition of good cause. If the good cause relates to a change in status of a child's school district of residence, however, action by a parent or guardian must be taken to file the notification within forty-five days of the last board action or within thirty days of the certification of the election, whichever is applicable to the circumstances.

Iowa Code §282.18(16)(1999).

Mr. and Mrs. Thomas want to open enroll their son for a number of reasons, as discussed above in the findings of fact. While these may be good reasons for wanting to open enroll Nathaniel, they are not good cause for filing an application late as defined by the law. There have been many appeals brought to the Iowa Department of Education regarding the definition of "good cause" since the enactment of the Open Enrollment Law. Only a few of those cases have merited reversal of the local board's decision to deny the applications.

Mr. Thomas questioned in the hearing how he could have complied with this law, if he did not know about the January 1 deadline. He stated the deadline was unfairly applied in this case. However, “ignorance of the law” does not constitute “good cause”.

The State Board has refused to reverse a late application due to ignorance of the filing deadline, *In re Candy Sue Crane*, 8 D.o.E. App. Dec. 198 (1990); or for missing the deadline because the parent mailed the application to the wrong place, *In re Casee Burgason*, 7 D.o.E. App. Dec. 367(1990); or when a young man's probation officer recommended a different school that might provide a greater challenge for him, *In re Shawn and Desiree Adams*, 9 D.o.E. App. Dec. 157(1992); or when a parent became dissatisfied with a child's teachers, *In re Anthony Schultz*, 9 D.o.E. App. Dec. 381(1992); or because the school was perceived as having a "bad atmosphere", *In re Ben Tiller*, 10 D.o.E. App.

Dec. 18(1993); or when a child experienced difficulty with peers and was recommended for a special education evaluation, *In re Terry and Tony Gilkinson*, 10 D.o.E. App. Dec. 205 (1993); or even when difficulties stemmed from the fact that a student's father, a school board member, voted in an unpopular way on an issue, *In re Cameron Kroemer*, 9 D.o.E. App. Dec. 302 (1992).

"Good cause" was not met when a parent wanted a younger child to attend in the same district as an older sibling who attended out of the district under a sharing agreement, *In re Kandi Becker*, 10 D.o.E. App. Dec. 285(1993). The Department denied a request to reverse a denial of open enrollment by a parent who had not received notice of the deadline and did not know it existed. *In re Nathan Vermeer*, 14 D.o.E. App. Dec. 83(1997).

In this case, as in the others, we are not being critical of the Appellants' reasons for wanting open enrollment. However, the reasons given for not filing the application by the deadline do not meet the "good cause" definition contained in the Iowa Code. Nor do they constitute a "similar set of circumstances consistent with the definition of good cause." Iowa Code §282.18(14)(1999). This case is not one that is of such unique proportions that justice and fairness require the State Board to overlook the regular statutory provisions (Iowa Code §282.18(18)(1999).

The legislature put a deadline of January 1 into the open enrollment law. Iowa Code §282.18(2)(1999). The District has an open enrollment policy that requires filing by the deadline, and has consistently followed the policy. The evidence at the hearing showed that the District followed the procedures set out in its open enrollment policy, and that those procedures conform to State law.

We see no error in the decision of the Board to deny open enrollment. The Board's decision to deny open enrollment was consistent with the laws of the State of Iowa and the rules of the Iowa Department of Education. Therefore, there are no grounds to justify reversing the District Board's denial of the open enrollment application.

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 and February 1, 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.

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DATE

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

_____
DATE

CORINE HADLEY, PRESIDENT
STATE BOARD OF EDUCATION