

**IOWA STATE BOARD
OF EDUCATION
(Cite as 17 D.o.E. App. Dec. 333)**

In re Jennifer Stock :

Tom & Robin Stock, :
Appellants, :

v. : DECISION

Waterloo Community School :
District, Appellee. : [Adm. Doc. #4092]

The above-captioned matter was heard telephonically on June 9, 1999, before a hearing panel comprising Thomas Andersen, consultant, Bureau of Administration & School Improvement Services; Connie Cannon, consultant, School to Work Office; and Ann Marie Brick, J.D., legal consultant and designated administrative law judge, presiding. Appellants, Tom and Robin Stock, were "present" telephonically and were unrepresented by counsel. Appellee, Waterloo Community School District [hereinafter, "the District"], was also "present" telephonically in the person of Bernard Cooper, director of student services. The District was represented by Attorney Steven Weidner of the Swisher & Cohrt Law Firm 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.

Appellants seek reversal of a decision of the Board of Directors [hereinafter, "the Board"] of the District made on January 25, 1999, which denied their application for open enrollment for their daughter beginning in the 1999-2000 school year.

**I.
FINDINGS OF FACT**

Tom and Robin Stock and their daughter, Jennifer, are residents of the Waterloo Community School District. At the time of the appeal hearing, Jennifer was being home schooled.

During the 1998-99 school year, Jennifer was a ninth grade student at the District's West High School. She began to skip school and on one occasion ran away from home. The Stocks were dissatisfied with the manner in which the school dealt with

Jennifer's behavior. They considered it to be lax in controlling the students, non-communicative with them about her truancy and uncooperative when they sought assistance. Jennifer's truancy ultimately resulted in her suspension for nonattendance. The District requires students suspended for nonattendance to complete the Waterloo Alternative Program for Attendance (WAPA) before they can be readmitted to their regular school. With the advice of family counselors, the Stocks decided that Jennifer should not participate in this program because she would be with other truant students, she could earn only a few credits and they questioned the adequacy of the students' supervision. One of the family counselors also advised against Jennifer's return to West High School because of possible negative peer pressure. The Stocks testified that they have lost all confidence in the District and they decided that home schooling was the best option.

The Stocks consider Jennifer's home schooling to be very successful. Her grades are good, she has participated in a number of community and volunteer activities, and she has a different set of friends. They plan to continue home schooling but want her to have additional opportunities through a school district, particularly in the areas of drama and foreign language. They applied for open enrollment for Jennifer to attend Cedar Falls High School beginning in the 1999-2000 school year as a home schooled/dual-enrolled student. The application was received by the District on December 28, 1998. The Board met on January 25, 1999, and denied the application because of adverse impact on the District's desegregation plan.

Bernard Cooper, the District's director of student services, testified for the District concerning the policies and procedures that were applied to the application for Jennifer.

The Waterloo Community School District has an open enrollment/desegregation policy and plan. 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/nonminority student ratios at both the District level and the building level will be primary determinants when making decisions on transfer requests.

(Bd. Policy 501.12, 1993, reviewed 1997.)

The Board's Administrative Regulation 501.12-R details the guidelines that will be followed in approving or denying open enrollment applications. Among those guidelines are the following:

Nonminority students wishing to transfer from the District will be denied approval if they attend a school with a minority enrollment that is five (5) percent greater than the District average.

Another guideline states:

Request for open enrollment transfer out of the District will not be granted if it is found 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.

For the 1998-99 school year the minority enrollment in the District as a whole was 30.6 percent, and the nonminority enrollment was 69.4 percent. Based on these percentages, the District established a ratio of 1:3, meaning that for every minority student who open enrolled out of the District for 1999-2000, three nonminority students would be allowed to open enroll out. The District determined that 17 minority students who applied for open enrollment out of the District for 1999-2000 were eligible to leave. Applying the 1:3 ration, the District then calculated that 51 nonminority students would be approved to open enroll out.

In addition to the District-wide ratio, the District also considers the percentages of minority and nonminority students in the assigned attendance center of each applicant. Nonminority students may open enroll out of the District if the minority enrollment in their assigned attendance center is no more than five (5) percent greater than the District average.

Jennifer Stock, a nonminority, was assigned to attend West High School, with a minority enrollment of 20.6 percent. Since that figure is less than five percent greater than the District average of 30.6 percent, Jennifer was considered eligible for open enrollment out of the District. She and the other eligible nonminority applicants were then listed chronologically based on when their applications were received. That is, her application was date stamped December 28, 1998, three days before the application period closed. The District quota of 51 nonminority students, however, was filled before Jennifer's name was reached. Her application was denied because her departure would adversely affect the District-wide ratio and she was placed on a waiting list.

Appellants pointed out that the District's practice of listing eligible nonminority applicants in the order their applications were received is contrary to Administrative Regulation 501.12-R. Mr. Stock quoted from the Regulation, as follows:

All other transfer requests will be placed on a list by a random selection procedure. Transfers will be granted in the order in which they appear on the list.

(Adm. Reg. 501.12-R.)

The Appellants also testified that had they known there was an advantage to applying early, they would have done so. Mr. Cooper testified that the practice of listing applicants chronologically is not publicized by the District, but is disclosed if someone asks. He also testified that the chronological listing of applications is a long-standing practice of the District. He testified that he believed the practice of randomly stamping the applications on the date of receipt was consistent with the random selection procedure.

The District's practice of denying open enrollment applications under its open enrollment/desegregation policy and plan was upheld by Black Hawk District Court Judge Briner in the Decision on Appeal in *Waterloo v. Iowa Department of Education*, Case Nos. LACV075042 and LACV077403, August 8, 1996. The policy and plan are unchanged since this decision was entered by Judge Briner, and the District has been consistent in its application.

II. CONCLUSIONS OF LAW

The Board's decision to deny the open enrollment application for Jennifer 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.

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 Brandts could open enroll Jennifer, since the application was timely filed. However, the District does have such a plan, adopted in 1973. *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/procedures in 1993 (*Id.*) in conformance with Iowa Code section 282.18(12) (1999). It contains objective criteria for determining when open enrollment transfers would adversely impact the District's desegregation plan and for prioritizing requests that would not adversely impact the plan. 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. It also contains a composite ratio provision, discussed above in the Findings of Fact, which is a method of determining when open enrollment out of the District would have an adverse impact on the desegregation plan by affecting the District-wide ratio of minority to nonminority students and the procedure for prioritizing transfers deemed not to have an adverse impact. This provision was upheld by the District Court Decision *Waterloo Community School District v. Iowa Dept. of Education*, *supra*.

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 affect 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 Appellants raised two issues as grounds for their appeal. One was dissatisfaction with and lack of confidence in the District. This is an unfortunate situation, but as a reason for wanting to open enroll, it is not unusual. If all students and their parents/guardians were completely satisfied with their district of residence, the number of open enrollment applications statewide would decrease significantly. In this case, the parents have valid reasons for requesting open enrollment. They are seeking what they consider to be best for their daughter. Their preference for another district over Waterloo, however, no matter the reason, is not sufficient to overturn a reasonable decision by the Board.

The Appellants' second issue is the District's failure to follow the Board's Administrative Regulation 501.12-R in processing timely-filed applications. That Regulation states in part:

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:

- 1) Applications of siblings of previously approved in the order first priority. Students from this group will be approved in the order in which the siblings were previously approved.
- 2) Transfer requests that would improve a building's racial balance will be given second priority. Students from this group will be approved in the order in which their applications were received.
- 3) All other transfer requests will be placed on a list by a **random selection procedure**. Transfers will be granted in the order in which they appear on the list. (Emphasis added.)

The District's testimony during the appeal hearing makes it clear that those requests are placed on the list in chronological order, based on the date on which each was submitted. It is also clear that this practice is advantageous to those who apply early and detrimental to those who do not. Finally, it is clear that this practice is not publicized.

On this point, we must agree with the Appellants. A procedure that is chronological cannot be considered "random." The policy, as written, seems clear to us. It provides for a "random selection procedure." Under the policy, there is no need to apply early. All timely-filed applications are to have an equal chance for selection.

The practice of the District is contrary to its published policy. It is a chronological first-come, first-serve policy. Had Appellants known about this practice, they would not have waited until December 28th to file their application.

It doesn't appear that there has been any intention to deceive on the part of the District. Date-stamping the applications for open enrollment selection seems to be a longstanding practice. It is a practice that has not been challenged since the District's policy was upheld by the Black Hawk District Court in 1996. This is problematic .

In appeals brought under Iowa Code 290, the State Board can decide only those issues raised by the parties to the appeal. Previous appeals of the Waterloo Board's denial of open enrollment applications have been affirmed by the State Board. That is because no other appellants have ever raised this issue, and there was no evidence that the District was not following its published policy.

The failure to follow board policy is grounds for reversal. "School boards are required to adopt policies for at least two reasons: first, to put the district and all constituencies on notice as to the board's general views on a given subject, and second, to guide the board in its decision making." *In re Joshua James Hakes*, 13 D.o.E. App. Dec. 332, 345 (1996).

To bring the District's practice into compliance with Administrative Regulation 501.12-R and to be fair to all applicants, we strongly urge the District to discontinue the practice of listing applicants according to the date on which the applications were received. We recommend assigning a random number to each and listing applicants numerically according to those numbers.

**III.
DECISION**

For the reasons stated above, the decision of the Board of Directors of the Waterloo Community School District made on January 25, 1999, denying the open enrollment application for Jennifer Stock, is hereby recommended for reversal. There are no costs to this appeal to be assigned.

DATE

ANN MARIE BRICK, J.D.
ADMINISTRATIVE LAW JUDGE

It is so ordered.

DATE

CORINE HADLEY, PRESIDENT
STATE BOARD OF EDUCATION