

**Iowa State Board
of Education**

(Cite as 17 D.o.E. App. Dec. 196)

In re Ryan J. Marx, :
In re Ashley Bradshaw :
*In re Carey Zwaschka*¹ :

Richard Marx[#4098], Leslie :
Bradshaw [4140], & Steven J. :
Zwaschka [4099], Appellants, :

v. : DECISION

Des Moines Independent Community :
School District, :
Appellee. :

The above-captioned matters were consolidated and were heard on July 8, 1999, before Ann Marie Brick, J.D., legal consultant and designated administrative law judge. Appellants Leslie Bradshaw and Richard Marx were present, unrepresented by counsel. Appellant Steven J. Zwaschka's appeal was dismissed upon Mrs. Zwaschka's request. [See fn. 1.] The Appellee, Des Moines Independent Community School District [hereinafter "the District"] was represented by Attorney Drew Bracken of Ahlers Cooney Dorweiler Haynie Smith & Allbee Law Firm, Des Moines, Iowa.

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 §§ 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 Rhonda and Richard Marx seek reversal of a decision of the board of directors [hereinafter "the Board"] of the District made on February 2, 1999, which denied their application for open enrollment out of the District beginning in the 1999-2000 school year.

Appellant Leslie Bradshaw seeks reversal of a decision of the Board of the District made on May 4, 1999, which denied her application for open enrollment out of the District beginning in the 1999-2000 school year.

¹ Appellant Zwaschka failed to appear at the time of the hearing and was contacted by telephone. Mrs. Zwaschka stated at that time they were dismissing their appeal.

These timely-filed 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 Steven J. Zwaschka, by certified mail, return receipt requested. The Department has a return receipt card showing service of the Notice of Hearing on Steven J. Zwaschka. Because he did not appear at the hearing, did not send a representative and did not move for a continuance, the appeal of Steven J. Zwaschka was dismissed on July 8, 1999.

In re Ryan J. Marx:

Mr. and Mrs. Marx have two children: a daughter, Cori Jo, who is two years old, and a son, Ryan J., who is five years old. Appellants filed an open enrollment application for their son, Ryan, to attend kindergarten in the Johnston Community School District, beginning in the fall of the 1999-2000 school year. Their application was timely filed before the June 30 deadline for kindergarten students. However, it was filed after the January 1 deadline for all other students. As a result, their application was placed at the end of the random computer list in the order in which it was received. Ryan is presently number 74 on the waiting list.

Appellants reside in the City of Des Moines and live in the Woodlawn attendance area. Mr. Marx testified that although they live in the Des Moines District, they consider Johnston their community. Their daycare is within the Johnston District. They own a small business in Johnston. Because of that investment, it is not possible for them to obtain a loan to purchase a home in Johnston. At the present time, they plan to spend the next couple of years paying down their business loans and then moving to Johnston permanently. Because of these plans, they do not want to have Ryan change schools after he begins kindergarten. Mr. Marx testified that when he was a child, he was transferred to a different district after his fourth grade year. He remembers how difficult it was to make new friends. He doesn't want that experience for his son or daughter.

The Marxs testified that they have become very involved in Johnston. As a small business, they have done fundraisers for the Johnston Community School District and have many friends in that community. They were advised at the appeal hearing that

they are not prevented from sending Ryan to school in Johnston if they pay tuition to either the Johnston Schools or to a private school. In the meantime, they were advised to reapply for open enrollment for the 2000-2001 school year.

In re Ashley Bradshaw:

Appellant Leslie Bradshaw timely filed an open enrollment application for her daughter, Ashley, to attend kindergarten in the Carlisle Community School District beginning in the fall of the 1999-2000 school year. Even though, her application was timely filed before the June 30 deadline for kindergarten students, it was filed after the January 1 deadline for all other students. As a result, her application was placed at the end of the random computer list in the order in which it was received. Ashley is presently number 92 on the waiting list.

Ms. Bradshaw stated that Ashley's daycare provider resides in Carlisle and is a relative. She plans to move to the Carlisle District in the near future and would like to have Ashley start school there under open enrollment and not have to change schools in the middle of her kindergarten year.

Ms. Bradshaw did not testify under oath, stating she realized she did not meet the hardship exception or have statutory good cause. Since she felt that pursuing her appeal would be futile, she asked that it be dismissed at the hearing.

The District:

The District has a formally adopted desegregation plan and open enrollment policy (Des Moines Board policy 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 1998-99 school year is 26.9 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 41 percent or greater this year is closed to open enrollment for next year. The buildings closed to open enrollment for the 1999-2000 school year are Brooks, Edmunds, 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 26.9 percent of the District's students were minorities, the composite ratio was 1:2.71. This means that for every minority student who open enrolls out of the District for 1999-2000, 2.71 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 No. 639.)

If information is attached to the application form, the District considers it to determine whether the applicant qualifies for the hardship exception.

For the 1999-2000 school year, 13 minority students applied for open enrollment. Using the composite ratio of 1:2.71, the District determined that 35 non-minority students would be approved for open enrollment ($13 \times 2.71 = 35.23$). Of the 116 non-minority applicants, 10 were

determined to be ineligible because they were assigned to a building closed to open enrollment. This left 106 applicants for 35 seats. Eight of these were approved under the sibling preference portion of the policy, resulting in 27 slots and 98 applicants. The remaining applicants were placed in numerical order according to a random number program and the first 27 were approved. The remainder were denied and placed on a waiting list that will be used only for the 1999-2000 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 Appellants' children, both of whom are on the waiting list, would adversely affect the District's desegregation plan.

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(2)(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 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 No. 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 District's policy does impose race-conscious remedies to further its desegregation efforts. The use of race in this manner is not prohibited. *Id.* Judge Bergeson stated in that decision, "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, it does not prefer or advance one race over another." *Id.*

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.

(In re Jesse Bachman, 13 D.o.E. App. Dec. 363.)

The facts discovered at the appeal hearing do not show that the District's policy was inappropriately or incorrectly applied to Appellants Marx and Bradshaw. Therefore, the Board's decision to deny these applications was reasonable.

We would like to note that Appellants were very cooperative during the appeal hearing and demonstrated that their paramount concern was for the welfare of their children. We would also like to take this opportunity to address the implementation of the hardship exception component of the Board's policy. The letter the District sends to applicants who have been denied open enrollment includes this statement:

You may appeal this decision to the State Department of Education (Jeannie Ramirez, 281-5295), if you believe it creates a hardship for your child or family.

We believe that this statement is misleading to District residents. It suggests that the State Board of Education will decide whether applicants qualify for the hardship exception. This is not the role of the State Board. The State Board's role is to determine whether the District Board reasonably applied its own policy, including the hardship exception. Since the Board's policy includes this exception, the District should have a procedure for determining whether each applicant qualifies for it, not just those who happen to attach such documentation to their application. Nothing prevents the District from developing and using a supplementary form for such a purpose.

In addition, we recommend that the denial letter be revised to read:

You may appeal this decision to the State board of Education as provided by Iowa Code §290.1. Contact Jeannie Ramirez at 281-5295.

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 February 2, 1999 and May 4, 1999, denying the open enrollment applications for the Appellants' children, is hereby recommended for affirmance. There are no costs of this appeal to be assigned.

DATE

ANN MARIE BRICK, J.D.
ADMINISTRATIVE LAW JUDGE

DATE

CORINE HADLEY, PRESIDENT
STATE BOARD OF EDUCATION