

**Iowa State Board  
of Education**  
(Cite as 17 D.o.E. App. Dec. 125)

***In re Brian Bayer Roby, et al.***

Kevin & Cindy Roby [4073],	:	
Ameila Weiny [4075], Pam Wagner*	:	
[4078], Patrick Bruner [4079],	:	
Joel & Cathy Zust [4080],	:	
Julie Sorensen [4093] Appellants,	:	
		PROPOSED
v.	:	DECISION
Des Moines Independent Community	:	
School District,	:	
Appellee.	:	

The above-captioned matters were consolidated and were heard on March 16, 1999, before Ann Marie Brick, J.D., legal consultant and designated administrative law judge. The following Appellants were present, unrepresented by counsel: Kevin and Cindy Roby, Patrick Bruner, Julie Sorensen, Amelia Weiny and Joel and Cathy Zust. Appellant Pam Wagner 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, Director of Student Services. The District was 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 §§ 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 a decision of the board of directors [hereinafter "the Board"] of the District made on January 19, 1999, which denied their applications for open enrollment out of the District beginning in the 1999-2000 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.

\*Dismissed for failure to appear.

**I.**  
**Findings of Fact**

Notices of Hearing were sent by the Department of Education to all Appellants, including Pam Wagner, by certified mail, return receipt requested. The Department has a return receipt card showing service of the Notice of Hearing on Pam Wagner. Because she did not appear at the hearing, did not send a representative and did not move for a continuance, the appeal of Pam Wagner was dismissed on March 18, 1999.

**In re Meaghan Bruner:**

Meaghan Bruner is a sixth-grade, non-minority student at Hiatt Middle School. Patrick and Lisa Bruner, her parents, applied for open enrollment to Southeast Polk for the following reasons. Meaghan had attended parochial school through the fifth grade, but left for financial and transportation reasons. The Bruner home is very close to the Southeast Polk District, and a district bus passes close to the house. Currently, Meaghan walks about five blocks to catch her bus to Hiatt. The parents, who work outside the home, are concerned about Meaghan being home alone for several hours after school. If she attended Southeast Polk, she could take the bus to the home of relatives in that district. The parents are also concerned that negative influences at Hiatt may be the cause of behavioral changes in Meaghan.

Bret Dublinske, Meaghan's godfather, testified that Meaghan has had discipline problems this year. She has had some problems in the past and is at a crossroads in her development. She needs structure and support, such as that provided by grandparents in Southeast Polk. Many family members have attended Southeast Polk, providing an extended support system, both in and out of school.

The Bruners' application for open enrollment was denied because Hiatt Middle School is closed to open enrollment, and non-minority students are not allowed to transfer out of the school under the District's open enrollment policy.

**In re Brian Bayer Roby:**

Brian Roby is a non-minority, sixth-grade student at Hiatt Middle School. His parents, Kevin and Cindy Roby, applied for open enrollment to Southeast Polk for the following reasons. Their home is close to the Southeast Polk boundary and about six miles from Hiatt. Most of Brian's friends attend Southeast Polk and his activities are with them. As a result, his school life is insulated from the rest of his life. In addition, the Robys are not satisfied with the educational program at Hiatt.

The Robys' application for open enrollment was denied because Hiatt Middle School is closed to open enrollment, and non-minority students are not allowed to transfer out of the school under the District's open enrollment policy.

**In re Danny Lee and Stephanie Miller:**

Danny Lee is a non-minority kindergarten student at Douglas Elementary School. His sister, Stephanie, also non-minority, will enter kindergarten at Douglas for the 1999-2000 school year. Their mother, Amelia Weiny, applied for open enrollment for both children to attend the Saydel District for the following reasons. Danny's kindergarten at Douglas is half-day. Stephanie is in a half-day Headstart program in Saydel. Their mother, who has two younger children at home, picks up both children from their schools and drives them to their grandmother in Saydel, who provides child care until about 5:30 p.m. and then drives them home. Douglas is six to eight miles from the grandmother's home. Mrs. Weiny previously lived in the Saydel District and many members of the family attended school there. Saydel's kindergarten program is all-day, which Mrs. Weiny prefers for Stephanie.

Mrs. Weiny's application for open enrollment was denied because the District determined that the departure of these students would adversely affect the composite ratio of minority to non-minority students for the District as a whole, a provision of the open enrollment policy.

**In re Jackie Sorensen:**

Jackie Sorensen is a non-minority, sixth-grade student at Hoyt Middle School. Her parents applied for open enrollment to Southeast Polk for the following reasons. The Sorensen home is about 50 feet from the Southeast Polk District. It is about one mile from Hoyt, so Jackie is not eligible for transportation. Her mother drives her to school, but because both parents work, she must walk home or find a ride. Jackie has asthma and takes medication for it. Spring and fall are particularly troublesome because of the asthma, as is the one-mile walk. Jackie has had fainting spells recently, although the cause has not been determined. The father's side of the family includes Native American heritage, but this has not been possible to document. Jackie has enrolled in the District as Caucasian, however.

Dr. Jeschke suggested that Jackie might be eligible for a transportation exception because of health reasons. That determination would be made after consultation between her physician and the District's nursing staff.

The Sorensens' application for open enrollment was denied 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, a provision of the open enrollment policy.

**In re Sarah Zust:**

Sarah Zust is a non-minority, eighth-grade student at Hoyt Middle School. She is scheduled to attend East High School for the 1999-2000 school year. Her parents applied for open enrollment to Southeast Polk for the following reasons. Their home is close to the Southeast Polk District and most of Sarah's friends attend Southeast Polk. She does not make friends easily and is afraid to attend East High School.

Dr. Jeschke suggested that the Zusts arrange a small-group orientation visit to East High School, as a way to familiarize Sarah with the school in advance.

The Zusts' application for open enrollment was denied because the District determined that her transfer out of the District would adversely affect the composite ratio of minority to non-minority students for the District as a whole, a provision of the open enrollment policy.

**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 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 19, 1999.

## 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 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 §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.

Several Appellants claimed that they had been discriminated against because the denial of their open enrollment requests was based on their non-minority racial status. 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 the facts of any individual student's case. Therefore, the Board's decisions to deny these applications were reasonable.

We 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 decision of the Board of Directors of the Des Moines Independent Community School District, made on January 19, 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