IOWA STATE BOARD
OF EDUCATION
(Cite as 16 D.o.E. App. Dec. 86)

In re Matthew Stout, Stephanie, Brady, and Jared Ennis, and Erik Jurgensen,	**:**	
Diana Stout, Laura Ennis, and Leslie Jurgensen, Appellants,	**:**	
v.	**:**	DECISION
Des Moines Independent Community School District, Appellee.	**:**	**[Adm. Doc. #s 3997, 3998, & 4002]**

These cases were consolidated and were heard together on June 4, 1998, before a hearing panel comprising Mr. Morris Smith, Bureau of Administration/School Improvement Services; Mr. Lee Crawford, Bureau of Technical & Vocational Education; and Amy Christensen, J.D., designated administrative law judge, presiding. The following Appellants were present: Ms. Laura Ennis, Ms. Diana Stout, and Mr. Kent and Mrs. Leslie Jurgensen. All the Appellants were unrepresented by counsel. The 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 Ch. 6. Authority and jurisdiction for the appeals are found at Iowa Code sections 282.18 and 290.1(1997). 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.

The Appellants seek reversal of the decisions of the Board of Directors [hereinafter, "the Board"] of the District made on April 21 and May 5, 1998, which denied their applications for open enrollment out of the District for the 1998-99 school year. The applications were denied on the basis that either 1) the exit of these students from the District would adversely affect the District's desegregation plan, or 2) the applications were late.

I.
FINDINGS OF FACT

The panel takes official notice of the District's open enrollment policies and desegregation plan, and of the minutes of District Board meetings for 1998. Fairness to the parties does not require that they have an opportunity to contest these facts. Iowa Code §17A.14(4)(1997).

All of the Appellants filed applications for their children to open enroll out of the Des Moines District to attend school elsewhere during the 1998-99 school year. Some of the applications were for students who will attend kindergarten next year. Those applications were denied on the basis that exit of the students would adversely affect the District's desegregation plan. Some of the applications were for students who are already in school this year. Those applications were denied on the basis that they were filed past the January 1st deadline.

In re Matthew Stout

Mr. and Ms. Stout applied for open enrollment to the West Des Moines District for their son, Matthew, for the 1998-99 school year for the following reasons. If he attends public school in the Des Moines District next year, Matthew will attend kindergarten at Hubbell Elementary School. The Stouts are divorced, and Matthew and his brother live with their father in Des Moines. Ms. Stout also lives in Des Moines. Both parents work. Matthew and his younger brother have attended daycare in West Des Moines, and the Stouts would like Matthew to stay there for his before and after school care. In addition, Matthew's brother attends Headstart in West Des Moines. The Stouts want their sons to attend daycare at the same place. The daycare provider transports children to school in West Des Moines. It would be very hard for Mr. and Ms. Stout to leave work to transport Matthew to and from school in Des Moines.

The Stouts filed their application for open enrollment on April 22, 1998. The District denied the Stouts' application for open enrollment pursuant to the composite ratio part of the desegregation plan. The decision was made at the May 5, 1998 Board meeting.

At the hearing, Ms. Stout testified that both boys are in counseling, and wondered whether this met the hardship exception contained in the District's open enrollment policy. Dr. Jeschke testified he would need to speak with the children's psychiatrist to determine this, and the two agreed to arrange this after the hearing.

In re Stephanie, Brady, and Jared Ennis

Ms. Ennis applied for open enrollment to the Urbandale District for her children, Stephanie, Brady, and Jared, for the 1998-99 school year for the following reasons. Ms. Ennis currently lives in Des Moines, but is looking for a home to rent in Urbandale. She applied for open enrollment in case she does not find housing in Urbandale by the time school starts in the fall. She is having some trouble finding affordable housing in Urbandale. Brady and Jared are cared for by their grandmother who lives in Urbandale. Ms. Ennis cannot afford to pay for daycare while she works. In addition, she prefers that Brady's grandmother care for him because she is familiar with his asthma and how to care for him. However, Brady has not needed medical attention this year, so his doctor cannot say that he needs daycare specifically provided by his grandmother. If he attends public school in the Des Moines District next year, Brady will attend kindergarten at Oak Park Elementary School. Jared would attend first grade at Oak Park. Stephanie would attend sixth grade at Harding Middle School. Ms. Ennis believes it would be difficult for Stephanie to start middle school at Harding and form friendships there, and then have to switch to Urbandale when Ms. Ennis finds housing there. In addition, Ms. Ennis works as a housekeeper, and could not leave work to transport the children to and from school in Des Moines. Ms. Sally Sweeny, grandmother of the children, submitted a letter on behalf of Ms. Ennis. In the letter, she stated that she could not transport the children to and from school in Des Moines because she has two other grandchildren to care for as well.

Jared is currently attending kindergarten in Urbandale. Jared's teacher wrote a letter saying he has some difficulty with appropriate social behavior, and recommended that he remain in the Urbandale District. Jared is not open enrolled into the Urbandale District. Ms. Ennis used his grandmother's address since she provides daycare, and enrolled Jared in kindergarten in Urbandale. Ms. Ennis and Jared have not lived in Urbandale themselves. Stephanie is currently attending fifth grade at Oak Park Elementary in Des Moines. Ms. Ennis has made arrangements with neighbors to care for her before and after school.

Ms. Ennis applied for open enrollment to the Urbandale District on May 9, 1998. The District denied her application for Brady pursuant to the composite ratio part of the desegregation plan. The District denied her applications for Jared and Stephanie on the basis that they were submitted late without good cause. The decisions were made at the April 21, 1998 Board meeting.

Ms. Ennis testified that Jared should be allowed to continue his education in Urbandale, because even though she never applied for open enrollment for him, he did begin his education in the Urbandale District. She asks that we take into account the financial, transportation, and daycare hardship the District's denial places on her family.

She also questions how she could have received information about open enrollment deadlines for her pre-kindergarten student, and asks us to consider her children's best interest.

In re Erik Jurgensen

Mr. and Mrs. Jurgensen applied for open enrollment to the West Des Moines District for their son, Erik, for the 1998-99 school year for the following reasons. If he attends public school in the Des Moines District next year, Erik will attend kindergarten at Woodlawn Elementary School. The Jurgensens live in Des Moines. Mr. and Mrs. Jurgensen both work outside the home. Erik has attended daycare at Koalaty Time in West Des Moines since he was eleven months old. The Jurgensens would like him to continue there with his younger sibling. Transportation is a major problem if Erik attends daycare at Koalaty Time in West Des Moines and kindergarten at Woodlawn. It would be a significant hardship for Mr. and Mrs. Jurgensen to leave work to transport Erik to and from school. The Jurgensens applied for all day kindergarten at Woodlawn, but did not get in. They did not find this out until April 10, 1998. They also requested morning kindergarten, because that would have been easier for transportation. However, they also did not get into morning kindergarten. It is an 18 – 20 minute drive from Koalaty Time to Woodlawn. Since he is in afternoon kindergarten, it would be impossible for Erik to eat lunch at Koalaty Time. Mrs. Jurgensen testified afternoon kindergarten students do not eat lunch at Woodlawn, and she does not want him to eat lunch with older students. Therefore, the Jurgensens would like Erik to attend school at Clegg Elementary in West Des Moines, which is very near to Erik's daycare. Erik has friends at daycare who will also be attending school at Clegg.

The Jurgensens applied for open enrollment for Erik on April 23, 1998. The District denied their application for open enrollment pursuant to the composite ratio part of the desegregation plan. The decision was made at the May 5, 1998 Board meeting.

Mrs. Jurgensen testified the District's publication of the open enrollment deadlines was questionable, particularly for pre-kindergarten students, who would not receive a school newsletter. In addition, she argues that they did not find out about all day kindergarten until April. Mrs. Jurgensen argues that the District's desegregation plan discriminates against Eric because he is caucasian. Mr. Jurgensen questions why the District's hardship policy does not include transportation as a hardship.[1] The Jurgensens ask that we consider Eric's needs and their needs as parents when we make the decision in this case.

[1] There is no requirement in state law that a District have any hardship exception in a desegregation plan. Iowa Code §282.18(3) and (12)(1997). Therefore, the District has the discretion to decide what to put in its hardship exception.

Parents of children assigned to one school in the District may apply for their child to attend a different school in the District, unless they are assigned to a building closed to open enrollment. Woodlawn is not closed to open enrollment. Therefore, the Jurgensens may request that he attend another school in the Des Moines District which may be more convenient to their daycare. In addition, as Dr. Jeschke testified, state law does not require that children attend kindergarten.

The District

The District has a formally adopted open enrollment/desegregation policy and plan. The District states the following in Policy Code 639 Open Enrollment:

> Diversity is a key component of a quality education. School experience for non-minority and minority youngsters sets the pace for cross-cultural relationships and non-discrimination that lasts a lifetime. Young persons are far better prepared for the future if they attend school in a diverse setting reflective of the diversity of society. Understanding similarities and understanding differences in individuals as well as cultures and backgrounds is not only healthy for the individual student but also for the entire community. Diversity enriches the educational climate in the school. All aspects of education — history, literature, language, etc. — are enhanced by different viewpoints and by different perspectives which racial and ethnic diversity bring to the discussion. Thus, diversity is deemed to be a major component of quality education in the District.

The open enrollment/desegregation policy and plan prohibits granting open enrollment when the transfer would adversely impact the District's desegregation plan. The policy contains objective criteria, which the District uses to determine whether a request for transfer would adversely affect the desegregation plan. The policy contains two parts it uses to determine adverse effect on the District's desegregation plan. First, the District identifies particular schools where transfer of minority or non-minority students would have an adverse effect because their leaving the building would increase racial isolation of the building. Those particular buildings are closed to open enrollment. None of the students in this case who were denied open enrollment pursuant to the desegregation plan will attend buildings closed to open enrollment. Second, the District develops a composite ratio of minority to non-minority students, which it uses in an attempt to preserve the District's existing minority/non-minority ratio. The policy also contains objective criteria the District uses to prioritize those requests for transfer deemed not to have an adverse impact on the desegregation plan.

The District denied the open enrollment applications for Brady Ennis, Erik Jurgensen, and Matthew Stout pursuant to the composite ratio part of the District's desegregation plan. The District administered the composite ratio part of the desegregation plan in the following way. The District determined eligibility or ineligibility of each applicant for open enrollment on a case-by-case basis pursuant to the District's open enrollment and desegregation policies. Each child's racial status was verified. Then the ratio of minorities to non-minorities at the child's attendance center was determined. The ratio of minorities to non-minorities for the District as a whole was determined. Finally, the District determined whether the child had siblings previously approved for open enrollment.

The District does not consider parents' reasons for requesting open enrollment. The application form does not provide a place for parents to state reasons, so the District does not know why parents requested open enrollment. If the parents attach information to the form regarding reasons for requesting open enrollment, the District considers those reasons to determine if the applicant meets the hardship exception contained in the District's open enrollment/desegregation policy. The application form for open enrollment is prepared by the Iowa Department of Education, not by the local school district.

The District's open enrollment/desegregation policy (Policy Code No. 639) contains a hardship exception. The policy states as follows: "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." The District interprets this exception narrowly. It includes things such as submission of a letter from a psychiatrist stating the child's presence in a particular setting would be detrimental. The Appellants in this case were not considered for hardship exceptions, since none of them attached information to the form which the District could have evaluated. However, at the hearing, Ms. Stout testified her children are receiving counseling, and she and Dr. Jeschke will make arrangements for him to talk with the children's psychiatrist so that Dr. Jeschke may evaluate whether they meet the District's hardship exception. If the District determines that the Stout children meet the hardship exception, this decision will no longer apply to them.

The parent determines the minority status of the child. In the application for open enrollment, parents are to check one of the following categories: white/not Hispanic, black/not Hispanic, Asian/Pacific Islander, Hispanic, or American Indian/Alaskan Native. All of the children of the Appellants in this case are non-minority students. If there is a question regarding a child's race, the parent may be asked to verify the race of the child.

All of the Appellants' children are among the group of non-minority students deemed ineligible by the District for open enrollment because their transfer would adversely affect the District's desegregation plan, with the exceptions of Stephanie and Jared Ennis. The applications for Stephanie and Jared Ennis were denied on the basis that they were submitted after the January 1st deadline. Stephanie and Jared will attend sixth and first grades next year, so their application deadline was January 1, 1998. The remaining children will be in kindergarten next year, so the application deadline for them was June 30, 1998. The actions to deny the applications for open enrollment were taken by the Des Moines Board at its meetings on April 21 and May 5, 1998.

Part of the District's open enrollment/desegregation policy and plan uses a ratio of minority to non-minority students for the District as a whole to determine when exit of students would adversely affect the District's desegregation plan. Matthew Stout, Brady Ennis, and Erik Jurgensen were denied open enrollment under this part of the desegregation plan. During the 1997-98 school year, minority enrollment in the Des Moines District is 26%. The District developed a composite ratio of minority to non-minority students for the district as a whole in the fall of 1997. The ratio is based on the district's official enrollment count taken in September. The district determined that since 26% of students in the District were minorities, and 74% of the students in the District were non-minorities, the composite ratio was 1:2.85 (74 divided by 26). The composite ratio is used to try to preserve the District's minority/non-minority student ratio. This means that for every minority student who open enrolls out of the District, 2.85 non-minority students will be granted open enrollment for the 1998-99 school year.

Thirteen applications for open enrollment out of the District were submitted by minority students for the 1998-99 school year. Using the composite ratio of 1:2.85, the District determined that 37 non-minority students would be eligible for open enrollment for the 1998-99 school year. (13 x 2.85 = 37.05) The District has a policy of dropping down to the next whole number. The only exception to this is if the last student on the list has a sibling requesting open enrollment, the sibling will be allowed to open enroll so as not to split the family.

There were 136 applications for open enrollment out of the District for the 1998-99 school year. Thirteen of these were minority applications. 123 were non-minority applications. 18 of these 123 non-minority applicants were determined to be ineligible for open enrollment under the building closed to open enrollment portion of the desegregation policy. This left 105 non-minority applicants to fill the 37 allowable open enrollment slots.

The District has a policy which requires that students with siblings who are already open enrolled out of the District be allowed to open enroll first, unless they are from a building closed to open enrollment. If a student will attend a building closed to open enrollment, there is no sibling preference policy. There were nine applicants with

siblings who had previously been allowed to open enroll out of the District, who were not from buildings closed to open enrollment, and who were non-minority students. This left 28 positions, and 96 applicants.

The District used a computer program to randomly assign numbers to these remaining 96 applicants, with siblings being placed together, and they were placed on a list in numerical order. The first 28 children on the list were allowed to open enroll. The remaining students were placed on a waiting list. Kindergarten students who applied for open enrollment after January 1st were placed at the end of the waiting list, unless they were assigned to a building closed to open enrollment. The waiting list will be used only for the 1998-99 school year. If other minority students leave the District through open enrollment, the students at the top of the waiting list will be allowed to open enroll in numbers according to the composite ratio.

Based on the open enrollment/desegregation plan, the Board determined that transfer of the students on the waiting list out of the District would adversely affect the District's desegregation plan.

The District's practice of denying open enrollment applications under the composite ratio portion of its open enrollment/desegregation policy was upheld by Polk County District Court Judge Bergeson in his Ruling on Petition for Judicial Review, Des Moines Independent School District v. Iowa Department of Education, AA2432, filed June 1, 1995.

Although parents may be denied open enrollment out of the District, they may still open enroll to another school within the District, unless their child attends one of the buildings closed to open enrollment.

If parents want their child to attend school out of the District, and are turned down for open enrollment, they may pay tuition to the receiving district and have their child attend there, thus circumventing the open enrollment process and the desegregation plan. (This assumes the receiving district does not deny the application for insufficient classroom space.)

The deadline for parents of kindergarten students to apply for open enrollment is June 30th. However, the District encourages kindergarten parents to apply by January 1st, because the District determines which students may exit the District under the desegregation plan in the month of January. Assuming the student is not assigned to a building closed to open enrollment, if a parent of a kindergarten student applies after this determination is made, the student will be placed at the end of the waiting list for open enrollment. Therefore, unless a student is assigned to a building closed to open enrollment, it is to kindergarten parents' advantage to apply prior to January 1st, even

though it is not required. All of the parents of kindergarten students in this case applied after the random selection process had already been completed, so their students' names were placed at the end of the waiting list.

II.
CONCLUSIONS OF LAW

Two very important interests conflict in this case: the right of parents to choose the school they feel 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 section 282.18(1)(1997) 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 section 282.18(3)(1997) 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)(1997) 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."

Iowa Code section 282.18(18)(1997) states, "Notwithstanding the general limitations contained in this section, in appeals to the state board from decisions of school boards relating to student transfers under open enrollment, the state board shall exercise broad discretion to achieve just and equitable results which are in the best interest of the affected child or children."

The open enrollment law gives parents a great deal of choice in the schools their children may attend. Originally enacted in 1989, the open enrollment law has been amended several times, and has progressively given parents more and more ability to

open enroll their children in the schools they prefer. In re Evan Wiseman, 13 D.o.E. App. Dec. 325. In fact, although parents are required to fill out an "application" for open enrollment, the term application is a misnomer, and the sending school district may not deny a timely-filed application, unless the transfer of the student will negatively impact the district's desegregation plan. Id. This is the reason the requirement that parents state a reason for the request on the application was taken out of the statute in 1996. Compare Iowa Code 282.18(2)(1995) with section 282.18(2)(1997).

In this case, the parents have important and valid reasons for requesting open enrollment for their children. We are very sympathetic to the difficulties encountered by families where both parents work, and single parent families when the single parent must work. Transporting children to and from school can be a major problem for these families. As was pointed out by several parents, good dependable childcare is critical to their children's well being, and is difficult to find, particularly for families with more than one child. The Des Moines District has developed before-and-after school care programs, which helps alleviate these problems, but daycare for half-day kindergarten students is not available. All-day kindergarten is offered by the District, but the number of children served is limited. We also recognize the value of having siblings remain together in the same district. These parents 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 would be no question that these parents could open enroll their children as requested, so long as the applications were filed in a timely manner. However, the District does have such a plan. It contains the objective criteria required by Iowa Code section 282.18(12)(1997).

Segregation of children in public schools solely on the basis of race denies the children of the minority group equal protection of the law guaranteed by the Fourteenth Amendment of the U.S. Constitution, even when the physical facilities and other tangible factors are equal. Brown v. Bd. of Education of Topeka, 347 U.S. 483(1954)(Brown I). Race discrimination in public schools is unconstitutional. Brown v. Board of Education of Topeka, 349 U.S. 294(1955)(Brown II). School authorities have the primary responsibility to recognize, assess, and solve these problems. Id.

Sixteen years after Brown II, the U. S. Supreme Court stated very clearly that school districts must take affirmative steps to integrate their schools, when it said:

> The objective today remains to eliminate from the public schools all vestiges of state-imposed segregation. Segregation was the evil struck down by Brown I as contrary to the equal protection guarantees of the Constitution. That was the violation sought to be corrected by the remedial measures of Brown II. That was the basis for the holding in Green [391 U.S. 430(1968)] that school

> authorities are 'clearly charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch'. 391 U.S. at 437-38.
>
> If school authorities fail in their affirmative obligations under these holdings, judicial authority may be invoked.

Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1(1971).

State Department of Education rules require school boards to take affirmative steps to integrate students as a part of general accreditation standards. 281 IAC 12.1.

The Des Moines District developed its desegregation policy to conform to these requirements, to conform to the requirements of Iowa Code section 282.18(12)(1997), and to follow the State Board rule and guidelines on nondiscrimination. Current guidelines are contained in *The Race Equity Review Process*, adopted April 12, 1990. The District began desegregation efforts in 1967 with establishment of an Equal Educational Opportunity Committee. Desegregation Plan, A Blueprint for Integration, revised June 1993, at p.1; Des Moines Independent School District v. Iowa Dept. of Education, Ruling on Petition for Judicial Review, June 1, 1995. In 1973, the Iowa Department of Public Instruction notified the District that 13 schools within the District were in violation of the State Guidelines on Nondiscrimination. Id. In 1974 and 1975, the federal government investigated the Des Moines District's desegregation/integration and nondiscrimination practices. Id. at p. 2. The U.S. Office of Civil Rights in Education issued a letter of noncompliance to the District as a result of the investigation. Id. The District settled the noncompliance by signing a Memorandum of Understanding with the U.S. Office of Civil Rights in Education, which was approved on November 16, 1976. Id. The Memorandum required the District to take affirmative steps to integrate schools in the District. Id. Among other things, the District committed to compliance with the State Guidelines on Non-Discrimination, which state that no school building may have a minority student population more than 20 percentage points above the district-wide minority student percentage. Id. The District currently has some buildings which are still not in compliance with the State Board Guidelines, and minority population in those buildings is greater than 20% above District-wide average percentages. Board Minutes, January 20, 1998.

The District's minority enrollment percentage continues to increase each year. Some of the increase in minority enrollment percentages in the District has nothing to do with open enrollment of non-minorities out of the District. This does not lessen the validity of evidence that open enrollment of non-minorities out of the District has also had an impact. Judge Bergeson stated the following in his Ruling at page 10: "In addition

to changing population and demographics, open enrollment out of the District has been cited as a factor contributing to the disparity in minority enrollment percentages between neighboring districts and the increasing minority percentage in the District."

The District developed its open enrollment/desegregation policy in conformance with Iowa Code 282.18(12)(1997). The policy contains objective criteria for determining when open enrollment transfers will adversely impact the District's desegregation plan, and for prioritizing requests which will not adversely impact the plan as required by 282.18(12)(1997). Board Policy No. 639, Open Enrollment. Among other things, the policy contains a composite ratio provision, which is a method of objectively determining when enrollment out of the District will have an adverse impact on the desegregation plan. It also contains the objective procedure (the computer random selection process) by which student transfers deemed not to have an adverse impact will be prioritized. This portion of the District's policy was upheld by Judge Bergeson in his Ruling on Petition for Judicial Review, Des Moines Independent School District v. Iowa Department of Education, June 30, 1995.

Mrs. Jurgensen raised the issue of reverse discrimination, and stated they and their child were being discriminated against because they were Caucasian, since Erik would have been allowed to transfer out of the District if he were a minority student. Judge Bergeson addressed this issue in his Ruling, and upheld the District's policy. The District's open enrollment/desegregation policy imposes race-conscious remedies to further its desegregation efforts. Use of race in this manner is not prohibited. Des Moines Independent School District v. Iowa Department of Education, Ruling on Petition for Judicial Review, June 30, 1995. The question to be asked is whether the classification "serves important governmental objectives" and is "substantially related to achievement of those objectives". Id. As Judge Bergeson found, the District's "interest in achieving and maintaining a racially integrated, diverse school system is compelling". Id. "The District is justified in implementing a desegregation plan given its history and its present inability to meet state nondiscrimination guidelines." Id. "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." Id. The analysis to be used is to determine whether the policy is substantially related to an important governmental objective. Id. "[T]here are numerous benefits in operating a racially integrated school system", and "the District has a compelling interest in achieving and maintaining integration given the facts underlying this case." Id. The second part of the analysis is to determine whether the District's plan is substantially related to this compelling governmental interest. Id. Judge Bergeson upheld the District's composite ratio portion of the policy, which used one year’s enrollment figures to determine the number of non-minority students allowed to open enroll the following year. Id.

The circumstances have not changed since Judge Bergeson's Ruling. The District continues to have buildings with minority percentages more than 20% above District percentages, and the minority population of the District remains significantly higher than that of surrounding districts. Therefore, the compelling governmental interest of the District remains, the remedies upheld by Judge Bergeson as substantially related to the important governmental interest are the same, and the allegation of reverse discrimination therefore fails.

Ms. Ennis enrolled Jared in the Urbandale District, using his grandmother's address in Urbandale. However, Ms. Ennis and her children did not live in the Urbandale District. Iowa Code §282.1(1997) defines what a resident child is for purposes of school attendance and tuition. That section states: "a 'resident' means a child who is physically present in a district, whose residence has not been established in another district by operation of law, and who meets any of the following conditions: 1. Is in the district for the purpose of making a home and not solely for school purposes. …" In this particular case, the child's residence is with his mother. Therefore, Jared is a resident of Des Moines. Ms. Ennis would like him to continue attending in the Urbandale District. However, Jared does not meet the criteria for a continuation case under the Iowa Code, because he was never a resident of the Urbandale District. Iowa Code §282.9(1997).

With respect to the students involved in this case, the District followed its open enrollment/desegregation policy, and determined that transfers of the students at issue in this case would have an adverse impact on the desegregation policy. This determination was in accordance with its policy and state and federal law.

Thus we have a conflict between the right of parents to choose their children's schools, and the constitutional requirement of integration and the obligation of the District to implement it. The parents believe that their families' and children's best interest should override the District's desegregation plan. There is some support for this in Iowa Code section 282.18(18)(1997), which states that "Notwithstanding the general limitations contained in this section, in appeals to the state board from decisions of school boards relating to student transfers under open enrollment, the state board shall exercise broad discretion to achieve just and equitable results which are in the best interest of the affected child or children". Section 282.18(1) states the intent to construe the open enrollment statute broadly to "maximize parental choice and access to educational choices not available to children because of where they live". These two sections of the open enrollment statute are in conflict with section 282.18(3), which states that in districts with desegregation plans, non-minority and minority pupil ratios are to be maintained according to the plan, and districts may deny requests for open enrollment if the transfer would adversely impact the desegregation plan.

The question presented is whether the provisions of the statute which provide for parental choice and State Board discretion override that provision which allows a district to deny open enrollment if it finds the transfer would adversely impact the district's desegregation plan. While Judge Bergeson's Ruling seems to indicate they do not, the Judge did not specifically address the question. Last year, the State Board held that they do not. In re Charles Ashley, et al., 14 D.o.E. App. Dec. 123(1997); In re Jesse Bales, et al., 14 D.o.E. App. Dec. 143(1997). The State Board also held they do not in decisions earlier this year. In re Tanner Jors, *et al.*, 16 D.o.E. App. Dec. 9(1998); In re Matthew Mitchell, *et al.*, 16 D.o.E. App. Dec. 27(1998).

Therefore, section 282.18(3), which specifically says that districts subject to desegregation plans may deny open enrollment if the transfer would negatively impact the desegregation plan, prevails in this case. The Des Moines District had the authority to deny open enrollment to these students, because their transfer out of the District would negatively impact the District's desegregation plan.

Stephanie and Jared Ennis' applications were denied on the basis that they were filed past the January 1, 1998 deadline. The open enrollment law was written to allow parents to maximize educational opportunities for their children. Iowa Code Section 282.18(1)(1997). However, in order to take advantage of the opportunity, the law requires that parents follow certain minimal requirements, including filing the application for open enrollment by January 1st of the preceding school year. Iowa Code section 282.18(2)(1997).

At the time the open enrollment law was written, the legislature recognized that certain events would prevent a parent from meeting the January 1st 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 1st filing deadline. Iowa Code sections 282.18(2), (4), and (16)(1997).

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 1st 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)(1997).

Although the State Board of Education has rulemaking authority under the open enrollment law, the rules do not expand the types of events that constitute "good cause". 281 IAC 17.4.

The District publishes notice of the open enrollment deadlines in the first two or three school newsletters in August, September, and/or October. The District also publishes notice in the newspaper at the beginning of the school year. The departmental rule requires that notice of the deadline must be given to all parents by September 30th of each year. 281 IAC 17.3(2). The District is not required to ensure that all parents actually read the newsletters and newspapers and know of the deadlines. The District fulfilled its obligations under the rule.

Ms. Ennis wants to open enroll her children to Urbandale because she needs the free daycare offered by the children's grandmother, she cannot afford to take time off work to transport her children to and from school in Des Moines, and she wants Jared to continue at Urbandale. She also is looking for housing in Urbandale, fears she may not be able to find affordable housing in Urbandale by the beginning of school, and does not want the children to begin school in Des Moines and then have to transfer. Unfortunately, these reasons are not good cause as that term is defined by the legislature. 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. 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 recently 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 Ms. Ennis' reasons for wanting open enrollment. She is struggling to provide for her family, and it would certainly be easier and more affordable for her to have the children attend school in Urbandale. However, the reason given for not filing the application by the deadline does not meet the "good cause" definition contained in the Iowa Code. Nor does it constitute a "similar set of circumstances consistent with the definition of good cause". Iowa Code section 282.18(16)(1997).

Ms. Ennis would like us to exercise discretion and allow her children to open enroll to Urbandale, which she believes would be in their best interest, pursuant to Iowa Code section 282.18(18)(1997). The State Board has been reluctant to exercise its subsection (18) authority absent extraordinary circumstances. *In re Crysta Fournier*, 13 D.o.E. App. Dec. 106(1996); *In re Paul Farmer*, 10 D.o.E. App. Dec. 299(1993). This case is not one which is of such unique proportions that justice and fairness require the State Board to overlook the regular statutory procedures. *Fournier, supra.*

The District has an open enrollment policy which requires filing by the deadline. It acted consistently with this policy. It complied with the requirement to give notice of the deadlines. The District always follows the policy which requires filing by the statutory deadline. State law clearly allows the District to deny open enrollment if the application is filed after the deadline, and the District acts consistently to deny late-filed applications. The evidence at the hearing showed that the District followed the procedures set out in its open enrollment policy, and those procedures conform to state law.

We see no error in the decisions of the Board of the District. The Board's decisions were consistent with state law 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 applications.

All motions or objections not previously ruled upon are hereby denied and overruled.

III.
DECISION

For the foregoing reasons, the decisions of the Board of Directors of the Des Moines Independent Community School District made on April 21 and May 5, 1998, which denied the Appellants' requests for open enrollment for their children for the 1998-99 school year, on the grounds the transfers would adversely impact the District's desegregation plan or that the applications were late, are hereby recommended for affirmance. There are no costs of this appeal to be assigned.

_____ _____

DATE

AMY CHRISTENSEN, J.D.
ADMINISTRATIVE LAW JUDGE

It is so ordered.

_____ _____

DATE

CORINE HADLEY, PRESIDENT
STATE BOARD OF EDUCATION