IOWA STATE BOARD
OF EDUCATION
(Cite as 16 D.o.E. App. Dec. 27)

In re Matthew Mitchell, et al.*	:	
Tina Mitchell, et al*., Appellants,	:	
v.	:	DECISION
Des Moines Independent Community School District, Appellee.	:	[Adm. Doc. #s **]

These cases were consolidated and were heard together on April 30, 1998, before a hearing panel comprising Dr. Gary Borlaug, Bureau of Practitioner Preparation and Licensure; Mr. Myril Harrison, Bureau of Technical & Vocational Education; and Amy Christensen, J.D., designated administrative law judge, presiding. The following Appellants were present: Mrs. Carolyn Bradley, Mr. Michael Eslick, and Mr. David Logan. During the course of the hearing, it was determined that Mr. Eslick's son was entitled to remain in the Saydel District under the continuation portion of the open enrollment law. Mr. Eslick and the District agreed to work together to accomplish this, Mr. Eslick filed a dismissal of his appeal, and his appeal is hereby dismissed. Appellants Ms. Karen Costanzo, Mr. Robert and Mrs. Marla Kelly, and Ms. Tina Mitchell did not appear at the hearing. 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 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 decision of the Board of Directors [hereinafter, "the Board"] of the District made on January 20, 1998, which denied their applications for open enrollment out of the District, beginning in the 1998-99 school year. The applications were denied on the basis that the exit of these students from the District would adversely affect the District's desegregation plan.

*"et al." means "and others."
**Adm. Doc. #s 3950, 3952, 3953, 3956, 3959, and 3967.

I.
FINDINGS OF FACT

The Department of Education sent Notices of Hearing to all Appellants, including Ms. Karen Costanzo, Mrs. Marla and Mr. Robert Kelly, and Ms. Tina Mitchell by certified mail, return receipt requested. The Department has return receipt cards showing service of the Notice of Hearing on all Appellants, including Ms. Costanzo, Mr. and Mrs. Kelly, and Ms. Mitchell. Ms. Costanzo, Mr. and Mrs. Kelly, and Ms. Mitchell did not appear at the hearing, did not send a representative, and did not move for a continuance.

All Appellants timely filed applications for their children to open enroll out of the Des Moines District to attend school elsewhere during the 1998-99 school year.

In re Tyler Bradley

Mr. and Mrs. Bradley applied for open enrollment to the Johnston District for their son, Tyler, for the 1998-99 school year for the following reasons. If he attends public school in the Des Moines District next year, Tyler will attend first grade at King Elementary School. The Bradleys live in Des Moines. They plan to purchase a home in Johnston in 1998, but have not yet done so. Their business is located in Johnston, and their younger daughter attends daycare in Johnston. Tyler is currently a kindergarten student at the Des Moines Christian school. King Elementary is about 2.5 miles from the Bradley's home, and 5.5 miles from their business. The Bradleys often work into the evening at their business, so they must pick up the children and come back to work. The children stay at the business with their parents in the evening. It would be a hardship on the family to have to transport Tyler to and from school at King. They would prefer he attend school at Wallace Elementary in Johnston, which is just a few blocks from the family business.

The Bradleys' application for open enrollment was denied because King is a building closed to open enrollment, and non-minority students are not allowed to transfer out of the building under the Des Moines District's open enrollment/desegregation policy.

In re Andrew Logan

Mr. and Mrs. Logan applied for open enrollment to the Urbandale District for Andrew for the 1998-99 school year for the following reasons. Andrew is currently a first grader at Hillis Elementary in the Des Moines District. He has not had a good first grade experience, and the Logans are looking for an alternative for him. Mr. Logan testified that Hillis is overcrowded, and Urbandale is not.

Andrew was denied open enrollment because the District determined that his transfer out of the District would adversely affect the composite ratio of minority to non-minority students for the District as a whole. Therefore, the Logans have the option of transferring him to another school in the District if they are unhappy with Hillis.

Mr. Logan argues that the District's decision was wrong, because Hillis Elementary has a minority population of 19.6%, which is less than the District average of 26%. Therefore, he believes transfer of Andrew out of the District will not have an adverse effect on the District's desegregation plan. Furthermore, he states that the desegregation plan is not equitable across the District, and points to the difference in application of the sibling preference policy as an example. He also points out that the District's minority percentage has been rising, and this is not due to a decrease in non-minority students from open enrollment, but rather to an increase in minority student enrollment. He states that even if no students were allowed to open enroll, the District's minority percentage would continue to rise. Rather than restricting open enrollment, he believes it would be better policy for the District to improve schools so parents would want to transfer into the District.

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. Second, the District develops a composite ratio of minority to

nonminority 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 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. Dr. Jeschke testified that 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. The Appellants in this case do not meet the hardship exception in the District's policy.

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 nonminority students. If there is a question regarding a child's race, the parent may be asked to verify the race of the child.

The Appellants' children are among the group of nonminority students deemed ineligible by the District for open enrollment because their transfer would adversely affect the District's desegregation plan. The action to deny the applications for open enrollment was taken by the Des Moines Board at its meeting on January 20, 1998.

The first part of the District's open enrollment/desegregation policy and plan 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 1997-98 school year is 26%. 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% or greater this year is closed to open enrollment for next year. The buildings closed to open enrollment for the 1998-99 school year are Brooks, Edmunds, King, Perkins, Longfellow, Lovejoy, McKinley, Moulton, Wallace, Harding, and Hiatt.

Mrs. Bradley's son was denied open enrollment because his particular building was closed to open enrollment due to the minority student percentage at King Elementary, his assigned school. King has a minority student enrollment of 58.5% during the 1997-98 school year, and is therefore closed to open enrollment. Based on the open enrollment/desegregation plan, the Board determined that transfer of Tyler out of his assigned building (and then out of the District) would adversely affect the District's desegregation plan. This portion of the District's open enrollment/desegregation policy was upheld by the State Board of Education in In re Shawna and Joshua Barnett, 10 D.o.E. App. Dec. 35, and approved by Judge Bergeson in his Ruling on Petition for Judicial Review, AA2432, filed June 1, 1995.

The second 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. 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. One student in this case, Andrew Logan, is on the waiting list. 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, 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 children to attend school out of the District, and they are denied open enrollment due to the District’s desegregation plan, they may pay tuition to the receiving district and have their children attend there, thus circumventing the open enrollment process and the desegregation plan.

II.
CONCLUSIONS OF LAW

Ms. Costanzo, Mr. and Mrs. Kelly, and Ms. Mitchell were properly served with the Notice of Hearing. They did not appear at the hearing, did not send a representative, and did not move for a continuance of the hearing. Therefore, the appeals for Ms. Costanzo, Mr. and Mrs. Kelly, and Ms. Mitchell are hereby dismissed.

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."

As the parents in this case point out, 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 was intended to allow parents of students who did not have educational opportunities in one district to transfer to another district. Since then, the 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. Parents may now open enroll their children for any reason, or for no reason at all, unless there is a desegregation plan in place, or unless one of the specific narrow exceptions in the statute exists. 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. Transportation of students to and from school can be a significant problem when both parents work, even with the use of before and after school daycare available at schools. We are also very sympathetic to parents and students when the student does not have a good experience at school. 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. Bd. 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.

Dr. Jeschke testified that the District's minority enrollment percentage continues to increase each year. As Mr. Logan pointed out, 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, for buildings with a minority student population greater than 15 percentage points above the District's minority percentage, non-minority students may not transfer out of the building. This portion of the District's policy was upheld by the State Board of Education in In re Shawna and Joshua Barnett, 10 D.o.E. App. Dec. 35, and discussed and approved by Judge Bergeson in his Ruling on Petition for Judicial Review, Des Moines Independent School District v. Iowa Department of Education, June 30, 1995. The policy also 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. The composite ratio provision was also upheld by Judge Bergeson in his Ruling.

Mr. Logan points out that the District's desegregation plan is not perfect, and he believes it is not applied equitably across the District. The parents question the validity of using this year's enrollment figures as a basis for deciding which buildings will be closed to open enrollment next year, and as a basis for determining the number of non-minority students allowed to open enroll next year under the composite ratio part of the plan. 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 found that the part of the District's policy which prevented minority students from transferring out of buildings with minority enrollments less than the District's average was not substantially related to the governmental interest. Id. However, he approved the finding by the State Board that closing buildings to transfer out by non-minority students for the following year when the building's minority population exceeds the District's by more than 15% is reasonable and sufficiently narrowly tailored. Id. He also upheld the District's composite ratio portion of the policy, which used one year's minority/non-minority enrollment figures to determine the number of students who could leave the district the following year. Id.

The circumstances have not changed since Judge Bergeson's Ruling two years ago. The District continues to have buildings with minority percentages more than 20% above District percentages, and the minority population of the Des Moines 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 District's application of its open enrollment/desegregation policy and plan conforms with the requirements of applicable law.

Some may ask how transfer of Tyler Bradley could negatively impact the District's desegregation plan, since he has been attending private school. This issue was addressed in In re David Early, 8 D.o.E. App. Dec. 206, 213-214 (1991). In that case, the State Board stated: "If we were to release all students whose parents had placed them in private schools or paid tuition to attend in another district, we would be sending the message that the way to avoid being 'trapped' in a desegregation district is to pay tuition elsewhere for one year, then you can use open enrollment. This would be a bad message to send, it would affect only those financially able to afford private or nonresident public school tuition, and it would be ignoring the District's good faith efforts to desegregate its system." In this case, the Bradleys were not trying to circumvent the desegregation plan by enrolling Tyler in private school. However, the good intentions of these particular parents do not mean that the State Board or the District should create a loophole which could gut the District's desegregation efforts. In addition, once the Bradleys applied for open enrollment, Tyler was considered to be a part of the public schools. The District uses the entire student population in an attendance area, not just students who actually attend, to make planning and staffing decisions. Therefore, the District correctly determined that, even though Tyler has been attending private school, his transfer out of King School and the District would negatively impact the District's desegregation plan.

Mr. Logan points out that Hillis has a minority enrollment percentage lower than the District average, and therefore, he argues, Andrew's exit from the building would not adversely affect the District's desegregation plan. However, Andrew was not denied open enrollment

under the building specific part of the desegregation plan. The District followed the composite ratio part of its desegregation plan when it denied the Logan's application.

With respect to the students involved in this case, the District followed its open enrollment/desegregation policy, and determined that transfers of these students would have an adverse impact on the desegregation policy. We agree with that determination.

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, nonminority 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).

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.

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

III.
DECISION

For the foregoing reasons, the decision of the Board of Directors of the Des Moines Independent Community School District made on January 20, 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, is 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