IOWA STATE BOARD OF EDUCATION
(Cite as 15 D.o.E. App. Dec. 276)

In re Christian Ford, Christopher Anderson, and David Anderson,	:	
Kristina Johnson and Kevin Anderson, Appellants,	:	
v.	:	DECISION
Waterloo Community School District, Appellee.	:	
		[Admin. Doc. #3946 & 3949]

This case was heard on March 4, 1998 before a hearing panel comprising Ms. Sharon Slezak, Office of the Director; Ms. Mary Jo Bruett, consultant, Bureau of Planning, Research & Evaluation; and Amy Christensen, designated administrative law judge, presiding. Two appeals were consolidated in this case. The Appellants, Ms. Kristina Johnson and Mr. Kevin Anderson, were present and were unrepresented by counsel. The Appellee, Waterloo Community School District [hereinafter, "the District"], was present in the persons of Ms. Sharon Droste, Director of Staff Services, Mr. Bernard Cooper, Director of Student Services, and Ms. Sharon Miller, Board Secretary. The District was represented by Mr. Steve Weidner, attorney.

An evidentiary hearing was held pursuant to departmental rules found at 281 Iowa Administrative Code Ch. 6. Authority and jurisdiction for this appeal are found at Iowa Code sections 282.18 and 290.1(1997).

The Appellants seek reversal of a decision of the Board of Directors [hereinafter, "the Board"] of the District made on January 26, 1998, which denied their requests for open enrollment on the basis that the transfers would adversely affect the District's desegregation plan.

The administrative law judge finds that she and the State Board of Education have jurisdiction over the parties and the subject matter of the appeals before them.

At the conclusion of the hearing, Appellant Ms. Johnson was given time to send in two exhibits, and the parties were given two weeks to submit briefs. This period was extended. Ms. Johnson filed her exhibits on March 10, 1998. She filed a brief on March 23, 1998. Mr. Anderson declined to submit a brief. The District filed its brief on April 2, 1998.

I.
FINDINGS OF FACT

In re Christian Ford

Christian Ford is the son of Ms. Kristina Johnson, and he will enter kindergarten in the fall of 1998. The family lives in the Waterloo District. Next year, if he were to attend school in the Waterloo District, Christian would attend kindergarten at Kingsley Elementary School. Ms. Johnson would like to open enroll her son to the Cedar Falls District so he could attend school at the Price Laboratory School. Christian currently attends Price Lab preschool. Ms. Johnson likes the small class size, diversity, and teaching at the Price Lab School.

Christian is a biracial child of white and black ancestry. Ms. Johnson identified Christian as white on hospital records. The Open Enrollment form provided by the Iowa Department of Education does not have a racial category of biracial, multiracial, or other. The form also does not have categories of minority or non-minority. The only choices available to Ms. Johnson are White/Not Hispanic or Black/Not Hispanic. Before filling out the open enrollment form, Ms. Johnson called the District's Office of Student Services to ask how biracial children were counted. A woman from the office told her biracial children were counted as African-American. Therefore, Ms. Johnson marked black on the form. Ms. Johnson testified that without the direction of the District's employee, she would have classified Christian as white.

The District denied Ms. Johnson's request for open enrollment at the Board meeting on January 26, 1998. The District's reasoning was that Christian would attend Kingsley Elementary School next fall if he attended school in the District, the District considered him to be a minority, and minorities may not transfer out of Kingsley Elementary School under the District's desegregation plan. This is because Kingsley has a very low percentage of minority students as compared to the minority student population of the District as a whole. If Christian were regarded as a white or nonminority student, he would be allowed to exit Kingsley under the building-specific part of the District's desegregation plan, although he still might not be able to exit the District under the composite ratio part of the desegregation plan. The composite ratio portion of the District's desegregation plan effectively places limits on the number of non-minority students who may exit the District based on the number of minority students who exit the District due to open enrollment.

After the decision by the Board, Ms. Johnson had several conversations with Mr. Bernard Cooper, Director of Student Services. Mr. Cooper told her that biracial students must be counted as minority students, and the category marked on the open enrollment form would depend on the race of the students' parents.

Ms. Johnson wants her child identified as white by the District. The District will not let her change her form to white, now that the District knows Christian is biracial.

According to a January 11, 1994 memo written by District staff member Sharon Droste to building principals, the District has certain descriptors to identify a student's race. According to the District's descriptors, Christian could be classified as either white or black.

Mr. Cooper and Ms. Droste testified that the District accepts the parent's designation of race on the open enrollment form. However, if the District is asked how to classify the student in the case of biracial children, as was done in this case, District staff tell the parent the student must be classified as a minority, and the particular racial category marked depends on the race of the parents. In Ms. Johnson's case, the District requires her to classify her son as black. They will not allow her to change the racial designation on the open enrollment form to white, which is what she wants to do. Both Mr. Cooper and Ms. Droste testified that this requirement is based on past practice by the District, and has been consistently followed. They did not know of any written policy or legal authority that would allow the District to do this, even though Mr. Cooper testified he had attempted to locate them. Ms. Droste testified that in one prior case in which the parents requested that a student's race be changed to a minority classification, the District asked for verification in some form.

Ms. Johnson objects to the District's refusal to allow her to classify her son as she chooses. As Ms. Johnson stated in her affidavit: "There is neither state nor federal law that offers a quantitative definition of 'black' or of 'white'. WCS's [Waterloo Community School's] arbitrary imposition of racial designation on my son is offensive and without legal precedent. Bi-racial children belong in part to both races, and completely to neither. As such, the decision of racial identification should belong to the parents, not the school district or one man within it. By denying me this choice, WCS has violated my rights as a parent. I respectfully request that my son's application be changed to 'White' to reflect our family's choice of racial identification, and that WCS's decision be reversed."

The District's denial of Ms. Johnson's application was based on its instruction that she classify her son as black. At the time the Board made its decision on January 26th, the Board members and Mr. Cooper did not know that Ms. Johnson objected to the requirement that she classify her son as black.

In re Christopher and David Anderson

Mr. Anderson is the father of two sons, Christopher and David. Christopher is a fourth grader, and David is a first grader, at Lowell Elementary School in the Waterloo District. The family lives in the Roosevelt Elementary attendance area, but the children are allowed to attend Lowell Elementary because their babysitter lives there.

Mr. Anderson applied for open enrollment for his sons to the Janesville School District for several reasons. Mr. Anderson and the boys live with Ms. Estrada and her three teen-age children. Ms. Estrada's children are open enrolled to the Janesville District. They would like all the children to attend school in the same district. They believe the children would have a better sibling bond if they attend the same school. Also, the family has only one vehicle. Ms. Estrada works in southern Waterloo. Janesville is to the north of Waterloo. Mr. Anderson is a full time student at UNI in Cedar Falls. Transportation would be easier if all the children attended the same school.

The District denied Mr. Anderson's request for open enrollment for his sons because they are non-minority students, live in the Roosevelt attendance area, and non-minority students are not allowed to exit Roosevelt under the building-specific portion of the District's desegregation policy.

Mr. Anderson questioned why his sons are not allowed to open enroll out of the District when they are allowed to attend Lowell Elementary instead of Roosevelt Elementary. He also argued his sons were being subject to reverse discrimination. He questioned the motives of the District, and argued that his sons were denied open enrollment because the District would lose money if they left. He also testified he spoke to Board member Lyle Smith before the meeting, who told him there was little chance the Board would approve his request, and only two Board members would vote in his favor. He then testified that the Board's vote was 5-2 to deny his request, which he testified presented "reasonable doubt" about the Board's decision.

The District

The Waterloo District has an open enrollment/desegregation policy and plan. The open enrollment program (Policy JECCE) provides that "Maintaining the District's current racial characteristics is critical to its: desegregation efforts, ability to comply with state guidelines on minority/nonminority ratios, [and] long-term racial and economic stability. Therefore, minority/nonminority student ratios at both the District level and building levels will be primary determinants when making decisions on transfer requests. (See Administrative Regulation JECCE-R)".

Administrative Regulation JECCE-R provides that the Superintendent is to review and process open enrollment requests and make recommendations to the Board for approval or denial of the applications based on "the impact approval of the application would have on the District's desegregation efforts." The District will follow guidelines set out in the regulation. Among the guidelines is included the following: "Open enrollment approvals may not cause the minority percentage of a school to exceed the District's minority percentage by more than twenty (20) percentage points." The following is another guideline: "To maintain racial diversity in district schools, minority students wishing to transfer from the District will be denied approval if they attend a school with a minority enrollment percentage which is at least five (5) percent less than

the District average. Nonminority students wishing to transfer from the District will be denied approval if they attend a school with a minority enrollment that is five (5) percent greater than the District average". A third guideline is: "Request for open enrollment transfer out of the District will not be granted if it is found the release of the pupil(s) requesting to do so will adversely affect the district's existing minority/nonminority ratio".

The open enrollment/desegregation policy contains a sibling preference, so that applications of siblings of students previously approved for open enrollment will be given first priority. However, the sibling preference policy does not apply to the building-specific portion of the desegregation plan. Therefore, nonminority students who will attend a building with a minority percentage five percent greater than the District average will not be allowed to transfer out of the building (and thus out of the District) even if they have siblings who were previously allowed to open enroll.

The District does not consider parents' reasons for requesting open enrollment. The District believes it is important to administer the open enrollment/desegregation policy and plan consistently, and not to make judgments regarding which parents' reasons for requesting open enrollment might be more or less important. Therefore, it administers its plan without consideration of individual family circumstances. The District determined that transfer of these students out of the District would adversely affect the District's desegregation plan. It therefore determined the appellants' children were ineligible for open enrollment for the 1998-99 school year based on the open enrollment/desegregation policy and plan. The action to deny the applications for open enrollment was taken on January 26, 1998.

For the 1997-98 school year, minority enrollment in the Waterloo District as a whole is 30.3%. Minority enrollment at Kingsley Elementary School is 12.8%. Minority enrollment at Roosevelt Elementary School is 80.7%. Minority enrollment at Lowell Elementary School is approximately 40%. These percentages are based on the District's official enrollment count made in September 1997. Decisions regarding open enrollment requests for the 1998-99 school year were based on these numbers.

Christian Ford was denied open enrollment because his assigned school for the 1998-99 school year is Kingsley Elementary School. The District considered Christian to be a minority student when it made its determination. The District determined that since Kingsley Elementary School has a minority enrollment of 12.8%, and the District average minority enrollment is 30.3%, that no minority students would be able to transfer from the building and thus out of the District. This is pursuant to the part of the District's desegregation plan which provides that minority students who wish to transfer from the District will be denied approval if they attend a building with a minority enrollment that is at least five percent below the District average.

Christopher and David Anderson were denied open enrollment because their assigned school for the 1998-99 school year is Roosevelt Elementary School. Both children are non-minority students. The District determined that since Roosevelt Elementary School has a minority enrollment of 80.7%, and the District average minority enrollment is 30.3%, that no nonminority students would be able to transfer from the building and thus out of the District. This is pursuant to the part of the District's desegregation plan which provides that nonminority students who wish to transfer from the District will be denied approval if they attend a building with a minority enrollment that is five percent greater than the District average.

Mr. Cooper testified that the Anderson children were allowed to transfer from Roosevelt Elementary to Lowell Elementary because both schools had a minority population greater than 5% above the District average, so their presence as non-minority students would have a positive effect on the minority/non-minority ratio at either school.

The District also has a composite ratio portion of its desegregation plan. In this portion of the District's plan, the District develops a composite ratio of minority to non-minority students for the District as a whole for each school year. The ratio is based on the District's official enrollment count taken in September. The composite ratio is used to preserve the District's minority/nonminority student ratio. This means that for every minority student who open enrolls out of the District, a certain number of nonminority students are allowed to open enroll out of the District. The composite ratio is determined each year based on the number of minority and nonminority students enrolled in the District. Historically, the District's composite ratio has been 1:3, which meant that for every minority student who open enrolled out of the District, three nonminority students were allowed to leave. This composite ratio part of the District's desegregation plan was not used with regard to any of the students at issue in this case, because they were denied open enrollment pursuant to the building-specific part of the desegregation plan. However, if any of these students is found not to be subject to the building-specific portion of the desegregation plan, they would still be subject to the composite ratio portion of the desegregation plan.

The District has consistently applied its open enrollment/desegregation policy. The District's practice of denying open enrollment applications under both the building specific and composite ratio portions of its open enrollment/desegregation policy was upheld by Black Hawk District Court Judge Briner in the Decision on Appeal in *Waterloo v. Iowa Dept. of Education*, Case Nos. LACV075042 and LACV077403, dated August 8, 1996. There have been no changes to the open enrollment/desegregation policy and plan since the decision was issued by Judge Briner. The District's open enrollment/desegregation plan and its application have also been upheld by the Iowa Department of Education. *In re Zachary Sinram, Stephanie Dusenberry, and Dale Schultz,* 14 D.o.E. App. Dec. 216 (1997). There have been no changes to the plan since the *Sinram* decision was issued.

II.
CONCLUSIONS OF LAW

This case presents a collision of two very important interests: 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."

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. These parents are genuinely interested in what is best for their children, and are seeking to obtain it by filing for open enrollment. We admire parents who have a commitment to their children's education, and these parents have shown their commitment by participating in this hearing.

If the Waterloo 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).

The Waterloo 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. 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. State Board

guidelines first adopted in 1972, and still in effect as modified, state that any building with a minority population twenty percentage points above the district-wide average minority population is in violation of the guidelines. *The Race Equity Review Process*, adopted April 12, 1990.

The District has had a long history of attempting to eliminate racial segregation in its schools, beginning in about 1967. *Waterloo v. Iowa Dept. of Education*, Black Hawk County District Court Decision on Appeal, Judge Briner, Case Nos. LACV075042 and LACV077403, August 8, 1996; Waterloo Desegregation Plan. The Board adopted a voluntary transfer plan in 1968. *Id.* The District continued to experience racial isolation in many of its schools, and adopted a desegregation plan in 1973. *Id.* Throughout the following years, the District has undertaken a great deal of effort to desegregate its schools and deal with declining enrollment in the District. *Id.* The Waterloo District has a much higher minority student population than surrounding districts. *Id.* For example, during 1993-94, Waterloo's minority student percentage was 26.2, Cedar Falls was 5.89%, and the remaining five districts were less than two percent minority. *Id.* Throughout the early 1990s, minority persons comprised approximately 12-13% of the population of Waterloo, but comprised a substantially higher percentage of the students in the Waterloo District (21.8 - 26.2%). *Id.*

The District adopted its current open enrollment/desegregation plan on October 25, 1993. Id. The District continues to have some schools that are not in compliance with the state guideline, and minority population in those buildings is greater than 20 percentage points above the District-wide average percentage. District Exhibit No. 2. The District also continues to have some schools with a very low minority population. Id.

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). The criteria are contained in Board Policy JECCE and Administrative Regulation JECCE-R. The policy contains criteria for determining when a particular building is closed to open enrollment because exit of certain students from that building will have an adverse impact on the desegregation plan. It also contains a composite ratio provision, discussed above in the Findings of Fact, which is a method of objectively determining when enrollment out of the District will have an adverse impact on the desegregation plan, and which contains the objective procedure by which student transfers deemed not to have an adverse impact will be prioritized. These provisions were upheld by Judge Briner in his Decision in *Waterloo v. Iowa Dept. of Education*, supra, and by the Iowa State Board of Education in *In re Zachary Sinram, Stephanie Dusenberry, and Dale Schultz*, 14 D.o.E. App. Dec. 216 (1997).

The determination by the District that Christian Ford's exit from Kingsley Elementary School would adversely affect the District's desegregation plan was based on the fact that Ms. Johnson marked Black/Not Hispanic as Christian's race on the open enrollment form. She did so at the direction of District staff. Since the District knows Christian is biracial, they will not allow Ms. Johnson to change the form to identify Christian as White/Not Hispanic, because the District requires known biracial children to be counted as minority students. Ms. Johnson would like her son to be identified as white, given the only choices of white or black, and she previously identified him as white on hospital records. She raises a very troubling issue. Is the identification of the race of a biracial student a parent's choice, or can a school district force a parent to identify a biracial student in a particular way? Additionally, the action by District staff is based on unwritten past practice. Even if the District had the authority to adopt such a requirement as written Board policy or rule, it has not done so.

In *In re Justin Matthew Rankin, et al.*, 12 D.o.E. App. Dec. 243 (1995), the question of a child's minority status was an issue with respect to three of the appellants. The Board stated: "The parents can designate their child's minority status in these cases, but the designation can only be made at the time the child is registered for school and cannot be changed later to avoid the operation of the District's desegregation plan". *Rankin*, supra at fn. 1, p. 244.

We have been unable to find any legal authority that would allow a District to require that a parent classify a biracial student in any particular way. The only federal standards of which we are aware support the contrary position: that the racial classification of a student is solely for the parent to determine. Office of Management and Budget (OMB) Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity, 62 Fed. Reg. 58781 (October 30, 1997).

The OMB standards relate to racial classification for the census to be taken beginning in 2000, and to data collection and record keeping in all federal programs, including education. The rules are final, and effective immediately for all new and revised record keeping or reporting requirements. All existing requirements must be made consistent with the standards at the time submitted for extension, or no later than January 1, 2003. Although the form used in this case was prepared according to the previous version of the standards in place prior to October 1997, the standards contain a number of statements that provide guidance relevant to the issue of whether the Waterloo District can or should be able to require Ms. Johnson to classify Christian as black.

The Interagency Committee which conducted the review of the Racial and Ethnic Standards with OMB also developed a number of principles to govern the review. The first two principles are as follows:

1. The racial and ethnic categories set forth in the standards should not be interpreted as being primarily biological or genetic in reference. Race and ethnicity may be thought of in terms of social and cultural characteristics as well as ancestry.
2. Respect for individual dignity should guide the processes and methods for collecting data on race and ethnicity; ideally, respondent self-identification should be facilitated to the greatest extent possible, recognizing that in some data collection systems observer identification is more practical.

62 Fed. Reg. 58781, at 58782.

OMB made a number of decisions during the review process. In the preamble at page 57885, OMB listed a number of decisions, including the following:

> Underscore that self-identification is the preferred means of obtaining information about an individual's race and ethnicity, except in instances where observer identification is more practical (e.g. completing a death certificate);
>
> Do not establish criteria or qualifications (such as blood quantum levels) that are to be used in determining a particular individual's racial or ethnic classification; and
>
> Do not tell an individual who he or she is, or specify how an individual should classify himself or herself.

62 Fed. Reg. 58781, at 58785.

OMB made the following comments at page 58785. "The OMB decisions benefited greatly from the participation of the public that served as a constant reminder that there are real people represented by the data on race and ethnicity and that this is for many a deeply personal issue. OMB also finds that the Committee's recommendations are consistent with the principal objective of the review, which is to enhance the accuracy of the demographic information collected by the Federal Government by having categories for data on race and ethnicity that will enable the capture of information about the increasing diversity of our Nation's population while at the same time respecting each individual's dignity".

One of the standards listed on pages 58788-9 is, "The categories in this classification are social political constructs and should not be interpreted as being scientific or anthropological in nature".

There is no authority that would allow the Waterloo District to require a parent of a biracial child to classify that child as the nonminority part of the child's racial heritage. Therefore, we find that the District may not require Ms. Johnson to classify her son as black. Rather, the District must allow her to classify her son as she deems appropriate. Since the decision of the District with regard to Christian was based on his classification as black, and District staff refused to allow her to change the classification, the District's decision with respect to Ms. Johnson must be reversed. We recognize that Christian will still be subject to the requirements of the District's desegregation plan. By our decision, we are not suggesting that he is not. However, the District must first allow Ms. Johnson to identify Christian as whatever racial category she believes appropriate. Only after that is done may the District apply the desegregation plan to his application.

Roosevelt Elementary School has a minority student population which is 50.4 percentage points above the District's average minority population. The District therefore has closed the building to open enrollment for nonminority students. The determination by the District that Christopher and David Anderson's exit from the building would adversely impact the District's desegregation plan was reasonable and in accordance with the plan.

Mr. Anderson argued that the District's motive for denying his sons' open enrollment requests was financial. Even if the District recognizes there is a financial benefit to it from keeping students in the District, this serves as no basis for reversal of the Board's decision, so long as the District followed the law and its desegregation plan. It did so with respect to the Anderson children.

Mr. Anderson raised the issue of reverse discrimination, and stated his children were being discriminated against because they were white, since they would have been allowed to transfer out of their assigned building if they were minorities. 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. *Waterloo v. Iowa Dept. of Education,* supra at 30. The question to be asked is whether the classification "serves important governmental objectives" and is "substantially related to" achievement of those objectives. *Id.* Actions of government agencies which use race conscious, not racially preferential, remedies to achieve desegregation are subject to this kind of scrutiny. *Id.* As Judge Briner found, the District's "desegregation plan is such a remedial measure taken to bring the District into compliance with the constitutional mandates and policy preferences favoring desegregation". *Id.* Judge Briner found that if the District

had approved all open enrollment applications, it would have adversely affected the District's desegregation plan. *Id.* He also found that the District's open enrollment/desegregation policy is substantially related to the important governmental objective of desegregation. *Id.*

The circumstances in the Waterloo District have not changed since Judge Briner's decision. Therefore, the important governmental interest of the District remains, the remedies upheld by Judge Briner as substantially related to the important governmental interest are the same, and the allegation of reverse discrimination by Mr. Anderson therefore fails.

Mr. Anderson stated that there was "reasonable doubt" regarding the Board's decision, because the Board's vote of 5-2 was as predicted by one Board member. The standard of "reasonable doubt" relates to criminal charges brought by the State against an individual. It is not to be used in education decisions by local school boards, or in review of those decisions by the State Board of Education.

With respect to the Anderson children, the District followed its open enrollment/desegregation policy, and determined that their transfer would have an adverse impact on the desegregation policy. We agree with that determination.

There is a conflict in the law 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. Iowa Code section 282.18(18)(1997) 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.

In discussing paragraphs 282.18(1) and 282.18(4)[now (3)](1995) of the Iowa Code, Judge Briner stated in his decision that the legislature recognized that both desegregation and parental choice through open enrollment were legitimate goals. However, he said, "to the extent that the two goals, desegregation and open enrollment, may be in conflict, the statutory scheme gives primacy to the goal of desegregation". *Waterloo*, supra at 19.

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. Last year, we determined that they do not. *Sinram,* supra *at 229.* Iowa Code 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 Waterloo District had the authority to deny open enrollment to the Anderson children, because their transfer out of their assigned building would negatively impact the District's desegregation plan.

III.
DECISION

For the foregoing reasons, the decision of the Board of Directors of the Waterloo Independent Community School District made on January 26, 1998, which denied Mr. Anderson's requests for open enrollment for his children for the 1998-99 school year, because the transfers would adversely impact the District's desegregation plan, is hereby recommended for affirmance. The decision to deny Ms. Johnson's application for her son was based on an underlying factual error, and is therefore recommended for reversal. There are no costs of this appeal to be assigned.

May 6, 1998
DATE

Amy Christensen
AMY CHRISTENSEN, J.D.
ADMINISTRATIVE LAW JUDGE

It is so ordered.

May 14, 1998
DATE

Corine Hadley
CORINE HADLEY, PRESIDENT
STATE BOARD OF EDUCATION