

**IOWA STATE BOARD
OF EDUCATION**
(Cite as 15 D.o.E. App. Dec. 200)

In re Abigail Anne Legg, :

Teddy & Linda Legg, :
Appellants,

v. : DECISION

Ames Community :
School District,
Appellee. :

[Admin. Doc. #3938]

This case was heard on February 24, 1998, before a hearing panel comprising Mr. Tom Andersen, Bureau of Administration, Instruction, and School Improvement; Ms. Jane Heinsen, Bureau of Practitioner Preparation & Licensure; and Amy Christensen, J.D., designated administrative law judge, presiding. The Appellants, Mr. Teddy and Mrs. Linda Legg, were present and were unrepresented by counsel. The Appellee, Ames Community School District [hereinafter, “the District”], was present telephonically in the persons of Dr. Ralph Farrar, Deputy Superintendent, and Mr. Tim Taylor, Assistant Superintendent, of the District. Mr. Ronald Peeler represented the District.

An evidentiary hearing was held pursuant to departmental rules found at 281 Iowa Administrative Code 6. Authority and jurisdiction for this appeal 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 appeal before them.

The Appellants seek reversal of a decision of the Board of Directors [hereinafter, “the Board”] of the District made on November 17, 1997, which denied their request for continued open enrollment for their daughter, Abigail, into middle school, due to insufficient classroom space.

**I.
FINDINGS OF FACT**

The Leggs and their daughter, Abigail, live in the Gilbert School District. Abigail is in the sixth grade.

In 1990, the Leggs applied for open enrollment so that Abigail could attend school in the Ames District. This application was approved, but only for grades K-6, which are elementary grades in the Ames District. At the time this open enrollment request was granted, the Leggs were told that the application would not be approved for 12 years as they had requested, because the Board had declared the District had insufficient classroom space for open enrollment purposes at the middle school. The Leggs were also told that if they wanted to apply later for open enrollment for Abigail for seventh grade and years following, the decision on the application would be made based on enrollment information available at that time.

On September 10, 1997, the District sent the Leggs a letter reminding them that Abigail's open enrollment application would expire at the end of the 1997-98 school year. The letter stated that the Ames District had declared there to be insufficient classroom space for grades 7 through 12, and that the District therefore would not allow any open enrollment requests into the middle school and high school. The letter also stated that the declaration of insufficient classroom space is made on a yearly basis, and would be decided by the Board at its November 17, 1997 meeting. The letter informed the Leggs that they needed to apply to renew the open enrollment agreement by January 1, 1998, if they wanted to continue Abigail's open enrollment. However, the letter additionally stated that the District could not tell them at that time whether the application would be approved, because the decision depended on the availability of classroom space at that time.

The Leggs filed their application for open enrollment on September 22, 1997. The Gilbert District approved it on September 24, 1997.

Abigail has attended all grades in the Ames District. She is halfway through the Ames District's Math in Context (MIC) curriculum. Her parents would like her to continue in the Ames District through the eighth grade, so that she may complete the MIC program. They believe that if Abigail is forced to leave the MIC program and attend another district with a traditional math program, she will have great difficulty making the transition. According to a survey Mr. Legg sent to the districts surrounding Ames, those districts do not offer a MIC math program. They also do not have staff with instruction experience in MIC, and do not have a program in place to transition a student previously in the MIC program into a more traditional math program.

Two experts testified regarding the District's Math in Context program. Ms. Mary Delagardelle testified on behalf of the District. Ms. Delagardelle is the principal at Crawford Elementary School, and the District's math specialist in the curriculum and instruction department. Her educational background is in education and administration. She testified that the MIC program is one set of materials that the District has chosen to support its math curriculum framework. The MIC program is based on a problem solving approach, where students are exposed to more areas of math and complex problem

solving on a regular basis. The District's math curriculum framework describes the expectations the District has for its students at each grade level and by developmental stages. That document is used to guide instruction in the classroom. There are materials the District uses to support that framework, and in grades 5-8, the Mathematics in Context program is the primary set of materials adopted to support the framework. Teachers also have other materials they use to meet the expectations in the framework. All students in grades 5-8 in the District are taught using the MIC materials.

Ms. Delagardelle testified the biggest difference between the expectations in the Ames framework and a more traditional framework's expectations is that the Ames program includes experiences with more content areas of math. The students work with statistics and probability concepts, geometry concepts, and algebra concepts in fifth through eighth grade. She testified this is not always the case in a more traditional program. She also testified the Ames program has higher expectations in terms of students' ability to solve complex problems, reason mathematically, and communicate those understandings. She testified a traditional program is sometimes more focused on the skills and the concepts, but not as much on the problem solving and reasoning as the Ames program.

Ms. Delagardelle testified whether a student who leaves the Ames District after sixth grade will have difficulty transitioning into another math program depends on that individual child. She testified that if a student is meeting the expectations of the Ames program at any grade level, he or she should not have a difficult time transitioning into another program. Ms. Delagardelle testified that students in sixth grade are expected to be able to add, subtract, and multiply fractions using informal strategies and procedures. She testified the difference between the Ames approach and a more traditional approach could be that a traditional program might formally teach students the algorithm for those operations in the sixth grade, and the Ames program may or may not have done so, depending on the readiness of the student. She testified she does not view the Ames curriculum framework and the MIC program as out of alignment with traditional curricula. She testified there are some skills and concepts the District believes students need to learn and understand before they are taught the formal procedure, but the Ames program is very closely aligned with most traditional programs. She testified the only area of difference might be the point at which they expect the students to know the formal procedures related to fractions.

Ms. Delagardelle testified that she could not say whether a student in the MIC program in sixth grade would be better off finishing the MIC program or transferring to another program without knowing the individual student. She testified that if she had a child, she would rather have the child complete the program rather than transferring to a traditional program. She testified the Ames curriculum framework is a powerful framework, and has content in it important for students to know. She testified a student would not have a disadvantage by having been in the program, even if he or she does not

complete it. If anything, she testified, it would have been an advantage for the student to have been in the program, because he or she would have been exposed to more content areas and higher level thinking processes as a part of the daily instruction. She testified the Ames program includes more mathematics than a traditional program, not less, so she does not think that a typical student who meets the District's expectations in the framework would ever be disadvantaged by having been in the Ames program.

Ms. Delagardelle testified that there have been discussions with parents in the District regarding low math ITBS test scores and the MIC program. However, she testified, the lowest math computation ITBS scores in the District occurred prior to implementation of the MIC program. Since implementation of the MIC program, ITBS math computation scores for the District have improved every year.

Dr. Leslie Hogben testified on behalf of the Leggs. Dr. Hogben is an associate professor of mathematics at Iowa State University. She testified her opinions were her own, and she was not acting as a spokesperson for ISU. Dr. Hogben has her doctorate in mathematics from Yale, and also has an undergraduate degree in math. None of her formal training prior to coming to ISU included education training. She was strictly a pure mathematician. However, she has a daughter attending school in the Ames District, and is familiar with the MIC program as a parent. She also serves on the Ames District's mathematics cabinet. Since coming to ISU, she has become involved with math education at ISU and works closely with faculty members whose training is in math education. She has taught the math for elementary school teachers sequence at ISU a number of times, and is currently teaching it. At ISU, she has worked on the development of appropriate mathematics requirements for future elementary school teachers.

Dr. Hogben wrote a statement on behalf of the Leggs, which was introduced as evidence in this case. In her statement, Dr. Hogben wrote that "One of the major ideas underlying MIC is to improve understanding of mathematical concepts by spending a great deal of time developing intuitive understanding and delaying the presentation of formal definitions and algorithms. For example, in the MIC curriculum it is not expected that all students can perform addition, subtraction, multiplication and division of fractions until eighth grade. This results in a curriculum ... which is seriously out of alignment with more traditional curricula, making it very hard for a student to switch math programs any time during grades 5 to 8. Furthermore, delaying formalization of many things could result in the loss of several years work if the student is unable to study the eighth grade MIC material (in which everything is brought to fruition)."

Dr. Hogben testified she believes that a student could have difficulties transferring either in or out of the MIC program, because the two curricula are fairly different in the order in which things are developed. Therefore, she testified, a student transferring out of the district could encounter difficulties when the new receiving district expects the

student to be able to use formal algorithms to perform fractional computations. Dr. Hogben testified that as a test writer, she knows test writers can write the test so it must be done formally as opposed to informally by using large numbers.

Dr. Hogben knows Abigail and her parents. However, she could not testify whether Abigail would have difficulty transitioning out of the Ames math program into another District's program, because she does not know anything about Abigail's mathematical background. She testified a typical student would encounter difficulties switching either way between the programs, unless the student has been taught at home. If the parents have been teaching computation algorithms at home, the transition into a traditional program would be easier. However, she testified, there would be a fair amount of adjustment in a transition either way because of differences in the order in which topics are taught. She testified that for an average student, it would be in the child's best interest to let her complete the program.

The Ames District has a written policy, which defines insufficient classroom space. It states: "Insufficient classroom space exists when conditions adversely affect the implementation of the educational philosophy and program of the district. The Board shall determine insufficient classroom space on a case by case basis. Criteria to be used by the Board in its determination may include, but not be limited to, available personnel, grade level, educational program, instructional method, physical space, available equipment and materials, available finances, facilities either being planned or currently under construction, sharing agreements in force, bargaining agreements in force, and district goals and objectives." Each year since November 1990, the Board of the District has declared there is insufficient classroom space at the middle and high school levels, and has not permitted students to open enroll into the middle and high school.

The District allows open enrollment into the elementary grades because it wants to maximize open enrollment to the extent possible. There are between three and five students open enrolled into the District in each elementary grade. Each of the parents has been notified of the insufficient classroom space at the secondary level. The District receives many calls from parents asking about open enrollment into the District. In most cases, when told the secondary schools are closed to open enrollment, the parents do not file applications for the elementary grades. If students were allowed to continue their open enrollment into the secondary grades, Dr. Farrar is concerned about the cumulative impact of all the elementary students currently open enrolled once they enter junior high and high school. He is also concerned that many more parents would apply for open enrollment in the elementary grades if they know their students could continue open enrollment in secondary schools.

On November 17, 1997, the Board again declared there was insufficient classroom space at the middle and high school levels. Therefore, grades 7 through 12 were closed to open enrollment into the District for the 1998-99 school year. The District

had an enrollment of 794 on the official count date this year at the middle school. Last year, the middle school enrollment was 801. Excluding students who move into the District, enrollment at the middle school is projected to drop for the next few years to approximately 736 students in the year 2000. No one at the hearing had projections regarding the number of students expected to move into the District in the next few years. The middle school was designed for between 500 and 600 students. The high school has an enrollment of 1585 students. Dr. Farrar testified both the middle school and high school are extremely overcrowded, although the middle school is more overcrowded than the high school. The District has constructed four temporary classrooms at the middle school. This added to the capacity of the middle school, although the District did not have a specific capacity number for the middle school other than the 500-600 figure. Dr. Farrar testified the Board considers any enrollment above 600 students at the middle school to be too large. The overcrowding problem is particularly acute in the middle school hallways during passing time and when serving lunch. The middle school also has only two student bathrooms, which Dr. Farrar testified is insufficient for the number of students attending. Dr. Farrar testified the District has an adequate number of books and equipment for the students, and the student/teacher ratio is adequate. A bond issue to build a new middle school failed in 1990. The District currently has a committee looking at long range facility plans, and would like to build a new middle school. However, there are no immediate plans to do so, and there is no chance additional construction would alleviate the insufficient classroom space for the 1998-99 school year. The Board therefore denied the Legg's request for open enrollment based on insufficient classroom space at the November 17, 1997 meeting. The Board also denied the open enrollment requests of two other parents whose children are in the same position as Abigail at the November meeting.

At the meeting, several Board members expressed concern about Abigail having to leave the Math in Context program before she completed it. They directed the District to make an effort to respond to the Legg's concerns, and help Abigail make the transition from the MIC program to the math program used in her home district. Dr. Farrar and the Leggs testified the District has not contacted the Leggs regarding this transition. Dr. Farrar testified the District has been waiting on the outcome of this appeal. However, he testified, if Abigail must leave the District, he will direct Abigail's teachers to meet with the Leggs to determine what is needed to help her make the transition.

When Abigail entered the MIC program, neither the District nor the Leggs considered the impact of her open enrollment only through the sixth grade. This case is the first time the District has considered the issue. The Leggs did not have a choice whether Abigail would be in the MIC program when she began it.

II. CONCLUSIONS OF LAW

Iowa Code section 282.18(2)(1997) provides that a receiving district must enroll an open enrolled student “unless the receiving district does not have classroom space for the pupil.” Similarly, an Iowa Department of Education rule provides that “No receiving district shall be required to accept an open enrollment transfer request if it has insufficient classroom space to accommodate the pupil(s).” 281 IAC 17.6(2). The rationale behind this statute and rule is that a District’s first obligation is to its resident pupils. In re Brie Hodges, 15 D.o.E. App. Dec. 1 (1997).

The open enrollment law and Department of Education rules require each school district to adopt a policy, which defines the term "insufficient classroom space" for that district. Iowa Code subsection 282.18(11)(1997); 281 IAC 17.6(3). 281 IAC 17.6(3) states that the “policy may include, but shall not be limited to, one or more of the following: nature of the educational program, grade level, available instructional staff, instructional method, physical space, pupil-teacher ratio, equipment and materials, facilities either being planned or under construction, facilities planned to be closed, finances available, sharing agreement in force or planned, bargaining agreement in force, law or rules governing special education class size, or board-adopted district educational goals and objectives.” The policy must be reviewed annually. 281 IAC 17.6(3).

In this case, the Board has a policy, which defines insufficient classroom space. The Board has determined that it has insufficient classroom space for grades 7-12. The Leggs argue that the Board’s determination is wrong, because the middle school has housed more students in the past than it does currently, and enrollment figures are going down. They state that since four temporary classrooms were added to the building, and Dr. Farrar could not give a specific capacity number for the building other than 5-600 (the original capacity of the building), the capacity must be 825 students, which is the number of students formerly in attendance. They argue that since there are adequate class sizes and pupil/teacher ratios, and there are enough books and equipment for the students, that the Board’s determination of insufficient classroom space was unsupported by the evidence. They argue that the Board’s determination of insufficient classroom space was based only on Dr. Farrar’s statement that the building was crowded and full.

We disagree. The Board has determined for every year since 1990 that there is insufficient classroom space at the middle school. The fact that enrollment is dropping does not necessarily mean that the building can adequately house the students who attend now, or the number who will be attending in the future. Addition of temporary classrooms does not necessarily increase the total building capacity or make a declaration of insufficient classroom space wrong when hallways, lunchrooms, and bathrooms remain as originally designed for 5-600 students. The law provides that the Board makes

the determination of insufficient classroom space based on the factors in the rules and the Board's own policy. The Board has done this, and the evidence presented by the District supports this determination.

The Board's determination that it will first look to the needs of its resident pupils is reasonable and is to be supported. Prior cases of the Department of Education called similar determinations "highly responsible". In re Alida Congden, 15 D.o.E. App. Dec. 169, 173 (1998); In re Amanda J. Baker, 12 D.o.E. App. Dec. 210, 212 (1995). The Board applied its open enrollment/insufficient classroom space policy consistently, and to allow the Leggs to open enroll Abigail into the District would violate the policy. Although the addition of only Abigail might not make much difference, the District cannot allow one student to continue and deny all others. The District correctly looked at the impact of not just Abigail's application, but of all similarly situated applicants. We affirm the Board's determination that there is insufficient classroom space in the secondary schools.

A second question is presented because Abigail is in the middle of the MIC program, and her parents believe it would be in her best interest to continue her open enrollment through the eighth grade so she can complete the program. Iowa Code section 282.18(18)(1997) provides 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." The Leggs argue that this section should be used to allow Abigail to continue in the district for two years so she can complete the MIC program, because they believe it will be extremely difficult for her to make the transition from the MIC program to a more traditional math program.

The State Board does not exercise the discretion contained in 282.18(18) often. It is important that the balancing of interests provided for in the open enrollment statute is followed in most cases. In re Beth Randolph, 15 D.o.E. App. Dec. 128 (1998). The State Board has viewed section 282.18(18) as "an award by the legislature of an extraordinary power to be used by the State Board sparingly", and to be used only in cases where "a child's unique situation cries out for state board intervention." In re Paul Farmer, 10 D.o.E. App. Dec. 299, 302 (1993).

The parties both presented excellent expert witnesses in this case. Unfortunately, the experts disagreed on whether a typical child would have difficulty making the transition from the MIC program to a more traditional math program. Neither expert could predict whether Abigail in particular would or would not have trouble making the transition. The parties each argued that their expert had the better credentials, and that more weight should be given to their expert's opinion. We believe that both experts have excellent credentials, and find both experts' opinions helpful. Neither expert's opinion answered the question whether Abigail herself would have a great deal of difficulty

making the transition from the MIC program to a more traditional math program. Since the experts disagreed whether a typical child would have difficulty, there is no way for this panel to answer the question. However, we can look for areas of agreement of the experts. It does appear that if there is going to be difficulty for Abigail, the specific area identified by both experts is in the area of formal algorithms for the computation of fractions. We have no evidence regarding Abigail's mathematical abilities, or whether she is meeting the District's math expectations for sixth grade. We do not know whether she is one of the more advanced students, and has thus been taught formal algorithms for fractions. We have no evidence regarding how quickly she could learn the algorithms if she has not yet had that instruction. From the testimony of both experts taken together, we know that any evaluation of whether Abigail will have trouble, and the extent of her trouble, will depend on Abigail as an individual. Someone must evaluate Abigail's abilities, and give additional instruction where the evaluation shows it is needed. The District has stated it will work with Mr. and Mrs. Legg and Abigail's teachers to assist in the transition. It does not appear from the testimony of both the experts that this could not be done. However, given the evidence we have from the hearing, there is no way for us to determine how much, if any, difficulty Abigail would have in making the transition.

If our only consideration were with regard to Abigail herself, we might say that to be safe, it would be in Abigail's best interest to stay where she is and complete the MIC program. However, Abigail is not the only child involved. Iowa Code 282.18(18) directs the State Board to "achieve just and equitable results which are in the best interest of the affected child or children." In this case, the affected children are Abigail, the other children open enrolled in Ames who are also in the MIC program or will be once they get to fifth grade, and the resident students who attend the Ames Middle School. We are sympathetic to the Legg's wishes and Abigail's needs. However, we must consider the needs of all the children who live in the District, not just what would be easiest or best for one child who does not live there. The middle school is overcrowded. It would not be in the best interest of the resident students of the District to allow even more students to enroll at the middle school, making it even more crowded. If Abigail were allowed to open enroll, the other open enrolled students must also be allowed to attend, because all students in the District are in the MIC program.

Given that we do not know for certain that Abigail will have difficulty with the transition, or the extent of the difficulty if she has any, and given that we must consider the needs of all the students at the middle school, we decline to exercise our discretion under Iowa Code section 282.18(18)(1997) to allow Abigail to complete the MIC program.

We see no error in the decision of the Board of the District. The Board's decision was consistent with state law, the rules of the Iowa Department of Education, and its own policy. Exercise of 282.18(18) authority would not be appropriate. Therefore, there are no grounds to justify reversing the District Board's denial of the open enrollment application for Abigail.

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

**III.
DECISION**

For the foregoing reasons, the decision of the Board of Directors of the Ames Community School District made on November 17, 1997, which denied the Leggs' application for open enrollment for Abigail, 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