

**IOWA STATE BOARD  
OF EDUCATION  
(Cite as 14 D.o.E. App. Dec. 337)**

---

<b>In re Dillon Bolich</b>	:	
Darrick Bolich, Appellant,	:	
v.	:	DECISION
Des Moines Independent Community School District, Appellee.	:	

[Admin. Doc. #3895]

---

The above-captioned matter was heard on July 24, 1997 before a hearing panel comprising Ms. Mary Jo Bruett, Bureau of Planning, Research & Evaluation; Dr. David Wright, Bureau of Administration, Instruction & School Improvement; and Amy Christensen, J.D., designated administrative law judge, presiding. The Appellant, Mr. Darrick Bolich, was present telephonically and was unrepresented by counsel. The Appellee, Des Moines Independent Community School District [hereinafter, "the District"], was present telephonically 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 Department Rules found at 281 Iowa Administrative Code 6. Authority and jurisdiction for the appeal is 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 this appeal before them.

Mr. Bolich seeks reversal of a decision of the Board of Directors [hereinafter, "the Board"] of the District made on May 20, 1997, which denied his application for open enrollment for his son, Dillon, beginning in the 1997-98 school year.

**I.  
FINDINGS OF FACT**

Mr. Bolich has two sons, Dillon and Devon. Devon is three years old. Dillon is five years old, and will be in kindergarten during the 1997-98 school year. Both boys currently attend daycare in Saydel at Saydel Play and Learn. Saydel Play and Learn is in one of the elementary schools in the Saydel School District.

Dillon's parents separated about two years ago. They were divorced on about May 15, 1997. In May or June of 1996, Dillon's mother beat him, and she had a founded child abuse case for the beating. Dillon had counseling to help him deal with the abuse.

Mr. Bolich has custody of the boys. He and the boys moved into Des Moines in January 1997. They live about seven or eight blocks from Adams school. Adams is Dillon's assigned school in the Des Moines District. Dillon's mother lives in West Des Moines, and she has visitation with the boys every other weekend.

Within the past year and a half, Dillon has attended five different daycare providers. When the family moved to Des Moines, Dillon went to daycare near Adams school. Unfortunately, the daycare closed about three months ago. It was at that time Mr. Bolich enrolled his sons at Saydel Play and Learn. Dillon seems to be adjusting well.

Mr. Bolich filed an application for open enrollment for Dillon to attend Saydel schools in May 1997. He did not file earlier because he thought Dillon would be attending daycare near Adams school, and he did not know this daycare would close. If Dillon attended school in Saydel, he could continue his current daycare situation, and attend school and daycare in the same building. If his application is denied, Mr. Bolich will have to find a new daycare provider who will transport Dillon to and from kindergarten at Adams.

The Des Moines District has a formally adopted open enrollment/desegregation policy and plan. The policy 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. It 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 determines 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 is verified. Then the ratio of minorities to nonminorities at the child's attendance center is determined. It is then determined whether the child has siblings previously approved for open enrollment.

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.

According to the District, this case does not meet the hardship exception. Dr. Jeschke testified it does not meet the change in parents' marital status portion of the exception because the divorce was not the reason for Mr. Bolich's request for open enrollment. Mr. Bolich requested open enrollment to continue Dillon's current daycare arrangement, which is not considered to be a hardship by the District.

The District determined that Dillon is a nonminority student who is ineligible for open enrollment because his transfer would adversely affect the District's desegregation efforts.

For the 1996-97 school year, minority enrollment in the Des Moines District was 25.2 %. In the portion of the District's desegregation plan at issue in this case, the District developed a composite ratio of minority to nonminority students for the district as a whole in the fall of 1996. The ratio is based on the district's official enrollment count taken in September. The district determined that since 25.2% of students in the District were minorities, and 74.8% of the students in the District were nonminorities, the composite ratio was 1:2.97 (74.8 divided by 25.2). 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, 2.97 nonminority students will be granted open enrollment.

Ten applications for open enrollment out of the District were submitted by minority students for the 1997-98 school year. Using the composite ratio of 1:2.97, the District determined that 29 nonminority students would be eligible for open enrollment for the 1997-98 school year. ( $10 \times 2.97 = 29.7$ ) The District has a policy of dropping down to the next whole number, since there could not be .7 of a student. 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 149 applications for open enrollment out of the District for the 1997-98 school year submitted by the January 1, 1997 deadline. Ten of these were minority applications. 139 were nonminority applications. 12 of these 139 nonminority applicants were determined to be ineligible for open enrollment under the building closed to open enrollment portion of the desegregation policy. This left 127 nonminority applicants to fill 29 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. There were 18 applicants with siblings who had previously been allowed to open enroll out of the District. This left 11 positions, and 109 applicants.

The District randomly assigned numbers to these remaining 109 applicants, with siblings being placed together, and they were placed on a list in numerical order. The first 11 children on the list were allowed to open enroll. The remainder of the students were placed on a waiting list. The waiting list will be used only for the 1997-98 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.

Mr. Bolich filed his application for Dillon in May of 1997. This is a timely filed application for a student who will be in kindergarten the following school year. However, kindergarten applications which are received after January 1 are placed at the end of the random computer list in the order they are received. Dillon is number 112 on the list. This effectively means he will not be granted open enrollment for the 1997-98 school year.

Based on the open enrollment/desegregation plan, the District determined that transfer of Dillon out of the District would adversely affect the District's desegregation plan. Therefore, the Board denied Mr. Bolich's application at their meeting on May 20, 1997.

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

## **II. CONCLUSIONS OF LAW**

As have other cases involving the open enrollment law and districts with desegregation plans, this case presents a collision of two very important interests: the right of a parent to choose the school he feels would be best for his child to attend under the Open Enrollment Law, and the requirement that the district 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.”

In this case, Mr. Bolich has important and valid reasons for requesting open enrollment for Dillon. Continuity in good dependable child care is important to his well being. Continuity of his caregiver where he seems to be adjusting well is very important, particularly when Dillon has experienced several changes in daycare providers, abuse at the hands of his mother, and the divorce of his parents. Mr. Bolich is a single parent with two young boys he obviously cares a lot about. He wants to stabilize their life. The panel is very sympathetic to Mr. Bolich and Dillon’s situation.

If the Des Moines District did not have a desegregation plan, there would be no question that Mr. Bolich could open enroll his son as requested. However, the District does have such a plan. It contains the objective criteria required by Iowa Code section 282.18(12)(1997). The plan has been upheld by the Polk County District Court. Des Moines Ind. Sch. Dist. v. Iowa Dept. of Educ., AA2432 (June 1, 1995).

The State Board recently followed Judge Bergeson’s decision, and affirmed the denial of open enrollment requests by the Des Moines District in In re Charles Ashley, et al., 14 D.o.E. App. Dec. 123 (1997) and in In re Jesse Bales, et al., 14 D.o.E. App. Dec. 143 (1997). The circumstances have not changed since Judge Bergeson’s decision and our decisions in Ashley and Bales.

With respect to Dillon Bolich in this case, the District followed its open enrollment/desegregation policy. Since his application was received after January 1, 1997, his name was placed at the end of the list of students who the District determined could not exit because of adverse impact. This was done according to the District's policy. The District determined that his transfer would have an adverse impact on the desegregation policy. We agree with that determination.

Thus we have a conflict between the right of a parent to choose his child's school, and the constitutional requirement of integration and the obligation of the District to implement it. Mr. Bolich believes that his child's best interest should override the District's composite ratio and 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.

We recently addressed the question 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 in Ashley and Bales, *supra*. In those cases, we determined that they do not.

Iowa Code Section 282.18(3)(1997), which says that districts subject to desegregation plans may deny open enrollment if the transfer would negatively impact the desegregation plan, will govern this case. The Des Moines District had the authority to deny open enrollment to Dillon, because his transfer out of the District would negatively impact the District's desegregation plan.

The District's Open Enrollment/Desegregation Policy No. 639 contains a hardship exception, which was discussed above in the Findings of Fact. Dr. Jeschke testified that the hardship exception does not apply here, because even though Dillon's parents were divorced in May, this was not the reason for the open enrollment request. He testified that the reason for the request was the family's daycare situation, and this does not qualify as a hardship. There is no requirement in state law that a district with a desegregation

plan have a hardship exception at all. Therefore, we are reluctant to disturb the District's interpretation of its own hardship exception absent an obvious failure to follow the policy.

Although we strongly believe in the benefits of early childhood education, there is an option available to Mr. Bolich. Iowa's compulsory attendance law requires children who are age six by September 15 to attend school. Iowa Code 299.1A(1997). Since Dillon will not be six by September 15, Mr. Bolich does not have to send Dillon to kindergarten. If he chooses, he could keep Dillon at Saydel Play and Learn for one more year. We also remind him of the January 1<sup>st</sup> deadline for open enrollment applications for future years.

**III.  
DECISION**

For the foregoing reasons, the decision of the Board of Directors of the Des Moines Independent Community School District made on May 20, 1997, which denied Mr. Bolich's request for open enrollment for Dillon for the 1997-98 school year 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