IOWA STATE BOARD
OF EDUCATION
(Cite as 14 D.o.E. App. Dec. 264)

In re Ashley Wells

Terry Wells, Appellant,

v. DECISION

Des Moines Independent Community School District, Appellee.
[Admin. Doc. #3880]

The above-captioned matter was heard on June 16, 1997 before a hearing panel comprising Ms. Charlotte Burt, consultant, Bureau of Special Education; Ms. Evelyn Anderson, consultant, Bureau of Community Colleges and Workforce Preparation; and Amy Christensen, J.D., designated administrative law judge, presiding. The Appellant, Mr. Terry Wells, 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 appeals are found at Iowa Code sections 282.18(3) 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. Wells seeks reversal of a decision of the Board of Directors [hereinafter, "the Board"] of the District made on April 15, 1997, which denied his application for open enrollment out of the District, beginning in the 1997-98 school year.

At the close of the hearing, Mr. Wells was given until June 19, 1997, to notify the Department of Education whether he intended to file a written brief in this appeal. The undersigned administrative law judge told Mr. Wells if we did not hear from him, we would assume he was not going to file a brief. Since we did not hear from Mr. Wells, he will not be filing a written brief in this case.

I.
FINDINGS OF FACT

Mr. Wells has a daughter, Ashley, who is five years old and will be in kindergarten during the 1997-98 school year. Ashley currently attends daycare in Altoona and in Grimes.

Ashley's parents have been divorced since 1995. The family originally lived in Altoona. When they were divorced, the decree granted joint custody of Ashley. Ashley continued to live in the family home, and her parents alternated living there with her. In

November of 1995, Ashley's mother moved to Des Moines. In May of 1996, Ashley's father, the Appellant in this case, moved to Des Moines. The parents continued to have 50/50 shared custody.

Ashley's mother remarried, and moved to Grimes in January of 1997. She would now like to have full custody. The Appellant is also seeking full custody, and a custody hearing is set for August 20, 1997. If Ashley's mother is granted custody, Ashley will attend school in Grimes.

The Appellant, Mr. Wells, would like to open enroll Ashley into the Southeast Polk District. If he obtains custody, Mr. Wells would like Ashley to continue her current daycare in Altoona, and be bused from there to Southeast Polk schools.

Mr. Wells teaches at Southeast Polk High School. He also coaches football. During football season, since he coaches until 6 p.m., it would be difficult for him to pick up Ashley from school. If Ashley continued to attend Altoona daycare, she could stay there until Mr. Wells could pick her up.

Mr. Wells would like Ashley to have as much continuity in her life as possible, and would therefore like her to continue her current daycare situation. Her parents' divorce and the several moves have been stressful for Ashley. He believes it is in her best interest to attend school in the Southeast Polk District. In the future, Mr. Wells plans to move to the Southeast Polk District, but he does not want to change Ashley's home yet, given all the changes she has had to live through in the past few years.

Mr. Wells timely filed an application on April 7, 1997 for Ashley to open enroll out of the Des Moines District to attend kindergarten in the Southeast Polk District during the 1997-98 school year.

The District denied the application at the Board meeting held on April 15, 1997.

The 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.

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 neither Mr. Wells nor Ashley's mother live in the Altoona District. For the exception to be applicable, one of the parents must live in the district to which open enrollment is sought.

The District staff determined that Ashley is a nonminority student who is ineligible for open enrollment because her 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 x 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 199798 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. Wells filed his application for Ashley on April 7, 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. Ashley is number 111 on the list. This effectively means she will not be granted open enrollment for the 1997-98 school year.

Based on the open enrollment/desegregation plan, the staff of the District determined that transfer of Ashley out of the District would adversely affect the District's desegregation plan. However, when the District's secretary typed the information for the Board meeting for April 15, 1997, she mistakenly dropped Ashley's name into the next

category of denials. Ashley appears in the following paragraph in the Board packet enclosed with the minutes of the meeting: "Late Application With No Good Cause: The following student has requested between district open enrollment for the 1997-98 school year. The application was late and no "good cause" as defined by state law was identified. [Ashley's name and identifying information then listed.] Superintendent's recommendation: The superintendent recommends that this application be denied."

The Board based its decision to deny Ashley's application for open enrollment on the ground she had filed a late application without good cause. However, District staff caught the mistake when preparing to send the denial letter to Mr. Wells. Therefore, Mr. Wells was told in his denial letter that the denial of his application was based on adverse impact on the District's open enrollment/discrimination plan.

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

II.
CONCLUSIONS OF LAW

The Board of Directors of the District based its decision to deny open enrollment for Ashley Wells on the ground that her application was filed late without good cause. Ashley will be a kindergarten student next year. Therefore, the deadline for her application is June 30, 1997. Iowa Code section 282.18(2)(1997); 281 IAC 17.2. Since Mr. Wells filed Ashley's application April 7, 1997, the application was not late. Therefore, the Board's decision was incorrect.

At the hearing, the District acknowledged the mistake, but argued the Board's decision should be affirmed because the mistake did not make any difference. The District argues that if we reverse the Board's decision, it will still deny Ashley's application on the ground that her transfer out of the District will adversely impact the District's desegregation plan, and that decision will be correct.

We would reverse the District because the Board's decision was incorrect, since Ashley's application was not filed late. However, we believe reversal of the Board's action would serve no purpose, since the Board's decision was based on a technical error by staff, the District staff could immediately take this case back to the Board for denial, or the Superintendent could deny the application administratively under Iowa Code section 282.18(3)(1997). We think it is in the best interest of the parent and child to resolve the

ambiguity of where Ashley will attend school.

Dr. Jeschke has the authority to take Ashley's application back to the Board and request that it be denied on the basis that granting it would adversely impact the District's desegregation plan. Alternatively, the Superintendent has the authority to deny the open enrollment application on the basis of adverse impact on the District's Desegregation Plan. Evidence at this hearing showed that the District staff correctly applied the District's open enrollment/desegregation plan to Ashley's application, and that her transfer from the district would adversely affect the plan.

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. Wells has important and valid reasons for requesting open enrollment for Ashley. Good dependable child care is important to her well being. Continuity of caregivers and friends is very important, particularly when Ashley has experienced the divorce of her parents and several moves, and will experience further change regardless of the outcome of the custody battle. Mr. Wells is obviously seeking what he believes is best for his daughter.

If the Des Moines District did not have a desegregation plan, there would be no question that Mr. Wells could open enroll his daughter 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 Ashley Wells in this case, the District staff followed the District's open enrollment/desegregation policy. Since her application was received after January 1, 1997, her 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 staff determined that her 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. Wells 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 has the authority to deny open enrollment to Ashley, because her 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 District interprets the change in parental marital status portion of the hardship exception to require that at least one parent live in the receiving district, and that therefore the hardship exception does not apply to this case. This interpretation is reasonable.

III.
DECISION

For the foregoing reasons, the decision of the Board of Directors of the Des Moines Independent Community School District made on April 15, 1997, which denied Mr. Wells' request for open enrollment for Ashley for the 1997-98 school year, is hereby recommended for affirmance. There are no costs of this appeal to be assigned.

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DA E

AMY CH STENSEN, J.D.
ADMINISTRATIVE LAW JUDGE

It is so ordered.

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CORINE HADLEY, PRESIDENT
STATE BOARD OF EDUCATION

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