IOWA STATE BOARD
OF EDUCATION
(Cite as 14 D.o.E. App. Dec. 216)

In re Zachary Sinram, Stephanie Dusenberry, and Dale Schultz	:	
Mike Sinram, Gary & Mary Dusenberry, and Tim & Susanne Schultz, Appellants,	:	
v.	:	PROPOSED DECISION
Waterloo Community School District, Appellee.	:	
		[Admin. Doc. #3869, #3870, & 3871]

The above-captioned matter was heard on May 22, 1997 before a hearing panel comprising Ms. Susan Andersen, consultant, Office of Educational Services for Children, Families, and Communities; Ms. Mary Jo Bruett, consultant, Bureau of Planning, Research & Evaluation; and Amy Christensen, designated administrative law judge, presiding. The appellants Mr. Gary and Mrs. Mary Dusenberry, and Mr. Tim and Mrs. Susanne Schultz were present and were unrepresented by counsel. Appellant Mr. Mike Sinram was not present, and did not send a representative. The Appellee, Waterloo Community School District [hereinafter, "the District"], was present in the persons of Ms. Sharon Droste, Director of Staff & Student Services, Mr. Ray Richardson, Executive Director of Equity & Special Projects, and Ms. Sally Turner, Board Secretary, Waterloo Community School District. The District was represented by Mr. Steven 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(3) and 290.1(1997).

After the conclusion of the hearing at approximately 2:00 p.m., Ms. Jeannie Ramirez of the Department of Education retrieved a telephone-mail message which was recorded at 12:30 p.m. from the appellant Mr. Mike Sinram. Essentially, the message stated that Mr. Sinram did not know he needed to come to the hearing, that he thought the decision would be made on the basis of evidence submitted [presumably the affidavit], and he wondered if a continuance was possible. Rather than grant the request for a continuance, the undersigned administrative law judge issued an order stating that unless objections were received within 7 days, Mr. Sinram's appeal would be decided

with the other appeals on the basis of his affidavit and evidence taken at the hearing. The District objected, citing to previous Departmental cases which dismissed appeals based on appellants' failure to appear at the hearing. The Dusenberrys sent a letter which is discussed below.

Iowa Code section 17A.12(1997) and prior State Board practice (see *In re Engel,* 11 D.o.E. App. Dec. 262(1994)) allow, but do not require, dismissal of a case when the appellant fails to appear at the hearing after proper service and who has not requested a continuance. Given the fact that Mr. Sinram called and left a telephone message prior to the conclusion of the hearing, even though it was not retrieved until after the conclusion of the hearing, the District's objection is overruled. Therefore, Mr. Sinram's appeal is decided on the basis of his affidavit and the evidence taken at the hearing.

The Dusenberrys sent a letter to the undersigned administrative law judge requesting that the decisions in the appellants' cases be made individually due to the uniqueness of each case. A copy of this letter was sent to each Appellant and the District. The decision in each of the Appellants' cases will be made individually, and the circumstances of each Appellant's case are considered individually. The appeals were consolidated only for the purpose of most expeditiously hearing the cases. Since the appeals were consolidated, the decisions in the cases will be written as one document. There are some issues which are the same or similar in each case, or in two of the appellants' cases. Those will be treated together. There are some issues which were raised by only one set of parents, or which apply only to the facts regarding one student. Those issues will be discussed individually in the decision. Even though the decision is written as one document, each case was considered and decided individually based on the unique facts of each case.

The Appellants seek reversal of a decision of the Board of Directors [hereinafter, "the Board"] of the District made on January 27, 1997, which denied their requests for open enrollment on the basis that the transfers would adversely affect the District's desegregation plan.

I.
FINDINGS OF FACT

In re Stephanie Dusenberry

Stephanie Dusenberry is a twelve-year-old girl who currently attends sixth grade at St. Patrick's Catholic School in Cedar Falls, Iowa. Next year, if she were to attend school in the Waterloo District, she would attend seventh grade at Central Middle School. Stephanie has attended St. Patrick's since the family moved to the Waterloo-Cedar Falls area. The Dusenberrys live in state owned housing in the George Wyth State Park, where

Mr. Dusenberry is the Park Ranger. Mr. Dusenberry is required to live in the state owned house as a part of his job. George Wyth State Park is in both Cedar Falls and Waterloo. Their residence is in the Waterloo School District, very close to the boundary with the Cedar Falls District. Stephanie's parents applied for open enrollment for her to the Cedar Falls District for a number of reasons.

The Dusenberrys moved to their present home about four years ago. Last year, the Dusenberrys applied for open enrollment for Stephanie, which was granted. They decided not to open enroll her at that time, and wait one year, because they did not want her to change to two different schools in two years. They also wanted to wait until Stephanie was entering seventh grade, when all students are coming from a number of elementary schools to junior high. Stephanie also wanted to wait to open enroll so she would be in a school where she knew a few friends. The Dusenberrys want Stephanie to open enroll now, because they feel it would be easier for her to transition into seventh grade, rather than waiting until she enters high school.

The family's activities are closely associated with Cedar Falls. They own two houses in Cedar Falls, and pay property taxes and some utilities to Cedar Falls. They purchased these homes as security in case the state residence was eliminated, or for Mrs. Dusenberry and the children in case something happened to Mr. Dusenberry. Stephanie attends private school in Cedar Falls, and has friends in Cedar Falls. The family grocery shops and banks in Cedar Falls, and their dentist and doctor are in Cedar Falls. They attend church in Cedar Falls. Their younger child attends preschool in Cedar Falls. It would be much more convenient for the family to have Stephanie attend school in the same town where the family has the rest of its activities, and more comfortable for Stephanie to attend a school where she has friends.

The District denied the Dusenberry's request for open enrollment because Stephanie would attend Central Middle School next fall if she attended school in the District, and nonminorities may not transfer out of Central Middle School under the District's desegregation plan. Stephanie is a nonminority student. The Dusenberrys question how Stephanie's leaving Central Middle School and the District can adversely impact the District's desegregation plan, since she has never attended school in the District.

In re Dale Schultz

Dale Schultz is an eleven-year-old sixth grader at Central Middle School in the Waterloo District. If he attends school in the Waterloo District next fall, he will be a seventh grader at Central. Dale's parents applied for open enrollment for him to the Dunkerton School District for the following reasons. The Schultz's have four children.

They applied for open enrollment to Dunkerton for all four boys last year. Two of the children were granted open enrollment, and two were denied. The Schultz's were content to put up with the difficulties of having their children in two districts for one year, because they believed the other two boys were going to be allowed to open enroll the next year under the sibling preference policy in the District's open enrollment/desegregation policy.

Mr. Schultz is the Police Chief in Dunkerton. He attended school in Dunkerton, and likes the District. The family plans to move to Dunkerton, but they have not yet done so. When the Schultz's move, they do not want Dale to have to change schools at that time. It would be difficult for this family to have three sons attend school in Dunkerton and one son attend school in Waterloo because of transportation and differing school schedules. Dale has had a few problems in school at Central, and Mrs. Schultz believes he would do better with smaller classes and more one-to-one attention she said he could receive at Dunkerton. Mrs. Schultz also believes he would benefit by some of the expanded learning opportunities available at Dunkerton.

However, when the Schultz's applied for open enrollment for Tyler and Dale for the 1997-98 year, Tyler's application was granted and Dale's was denied. Tyler is going into ninth grade, and would have been a student at East High School. Dale is going into seventh grade, and would be a student at Central Middle School. The District denied Dale's application because he will be a student at Central Middle School next year, and nonminorities may not transfer out of Central Middle School under the District's desegregation plan. Dale is a nonminority student. Therefore, the Schultz's appealed Dale's denial.

In re Zachary Sinram

Zachary is an eighth grader at Hoover Middle School. Next year, if he attends school in the Waterloo District, he will be a ninth grader at West High School. His father applied for open enrollment for Zachary to the Jesup Community School District for the 1997-98 school year for the following reasons.

Mr. Sinram has been a teacher and coach at Jesup for twenty-two years. He wants Zac to experience the many extra-curricular offerings provided by the Jesup District. He would also like Zac to be able to take college level English, math, and sociology courses offered at Jesup by an instructor who travels from Hawkeye Community College to teach at the high school. By doing this, Zac could earn college credit while still in high school. They are pleased with the education Zac has received in the Waterloo schools, but feel a change to the Jesup District would be best for Zac's development at this time.

The District denied Zachary's application for open enrollment using the composite ratio portion of its open enrollment/desegregation plan. Zachary is a nonminority student. Mr. Sinram appealed the denial.

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: "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 desegregation guidelines outweigh the sibling preference policy. 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 1997-98 school year based on the open enrollment/desegregation policy and plan. The action to deny the applications for open enrollment was taken on January 27, 1997.

For the 1996-97 school year, minority enrollment in the Waterloo District as a whole is 29.2%. Minority enrollment at Central Middle School is 39.2%. Minority enrollment at West High School is 21.6%. These percentages are based on the District's official enrollment count made in September 1996. Decisions regarding open enrollment requests for the 1997-98 school year were based on these numbers.

Two of the appellants' children, Stephanie Dusenberry and Dale Schultz, were denied open enrollment because their assigned school for the 1997-98 school year is Central Middle School. Both children are nonminority students. The District determined that since Central Middle School has a minority enrollment of 39.2%, and the District average minority enrollment is 29.2%, 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.

Zachary Sinram will attend West High School next year, and was denied open enrollment under the composite ratio portion of the District's desegregation plan. Zachary is also a nonminority student. In this portion of the District's plan, the District developed a composite ratio of minority to nonminority students for the District as a whole for the 1996-97 school year. The ratio is based on the District's official enrollment count taken in September 1996. The District determined that since 29.2% of the students in the District were minorities, and therefore 70.8% of the students in the District were nonminorities, the composite ratio was 1:3[1]. The composite ratio was used to preserve the District's minority/nonminority student ratio. This meant that for every minority student who open enrolled out of the District, three nonminority students were 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.

The District determined that fourteen minority students who applied for open enrollment out of the District were eligible to leave for the 1997-98 school year. (There are restrictions on minority applications for open enrollment not at issue in this case.) Using the composite ratio of 1:3, the District determined that 42 nonminority students would be eligible for open enrollment for the 1997-98 school year. The District then determined which applicants for open enrollment had a sibling previously allowed to open enroll pursuant to the sibling preference policy. The District determined which of these students were eligible to leave their assigned building, and those students were

[1] We note this calculation is mathmatically incorrect. However, this error is irrelevant to the decision in this case.

allowed to open enroll. Eleven students were allowed to open enroll under the sibling preference policy. This left space for thirty-one additional students to open enroll. The District determined which applicants were eligible to leave their assigned building. These applicants for open enrollment were placed on a list in chronological order of the application submission date. The first thirty-one students on the list were allowed to open enroll. The remaining applicants eligible to leave their assigned building were placed on a waiting list in chronological order by application submission date. Based on the District's open enrollment/desegregation plan, their applications for open enrollment were denied, because the District determined that their transfer would adversely affect the District's desegregation plan. Zachary Sinram was one of the students on this list. The students who were inelegible to leave their assigned building were placed on a separate list in random order. These students were also denied open enrollment based on the District's determination that their transfer out of their building would adversely affect the District's desegregation plan. Stephanie Dusenberry and Dale Schultz were placed on this list, because their assigned attendance center for the 1997-98 school year was Central Middle School.

The District has consistently applied its open enrollment/desegregation policy during all the years in question in this case. In her prior application, Stephanie Dusenberry would have been open enrolling from a building not closed to open enrollment for nonminorities if she had not been attending private school last year, and thus her request for last year was granted. The siblings of Dale Schultz also were open enrolling from buildings not closed to open enrollment for nonminorities, which is why their applications were granted while Dale's was not.

The District's practice of denying open enrollment applications under 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 entered by Judge Briner.

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."

Iowa Code section 282.18(18)(1997) states, "Notwithstanding the general limitations contained in this section, in appeals to the state board from decisions of school boards relating to student transfers under open enrollment, the state board shall exercise broad discretion to achieve just and equitable results which are in the best interest of the affected child or children."

As the parents in this case point out, the Open Enrollment Law gives parents a great deal of choice in the schools their children may attend. Originally enacted in 1989, the Open Enrollment Law 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 coming to 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 adopted in 1972 and still in effect 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, 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 which 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 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. 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. This provision was upheld by Judge Briner in his Decision in *Waterloo v. Iowa Dept. of Education*, supra.

Central Middle School has a minority student population which is ten percentage points above the District's average minority population. The District therefore has closed the building to open enrollment. The State Board recently approved the Cedar Rapids District's use of a ten percent figure in *In re Christina E. Hamous*, 14 D.o.E. App. Dec. 165 (1997). Given the Waterloo District's longstanding problems with racially isolated buildings and its efforts to integrate its schools, we believe the use of a ten percent figure is reasonable and substantially related to achievement of desegregation in the District. Since both students denied open enrollment out of their building were assigned to Central

Middle School, which has a minority population ten percentage points above the District average percentage, the determination by the District that their exit from the building would adversely impact the District's desegregation plan was reasonable.

Some of the parents raised the issue of reverse discrimination, and stated they and their children were being discriminated against because they were white, since the students would have been allowed to transfer out of their assigned building and thus the District if they were minorities. The Schultz's apparently believed Waterloo and Des Moines are the only two districts in Iowa with desegregation plans which restrict open enrollment, and questioned why they would do so when, as they said, other large districts do not[2]. 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-concious, 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 have not changed since Judge Briner's decision almost a year ago. 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 allegations of reverse discrimination by some of the parents therefore fail.

The Dusenberrys questioned how transfer of their daughter could impact the District's desegregation plan, since Stephanie attends private school. This issue was addressed in In re David Early, 8 D.o.E. App. Dec. 206, 213-214 (1991). In that case, the State Board stated: "If we were to release all students whose parents had placed them in private schools or paid tuition to attend in another district, we would be sending the message that the way to avoid being 'trapped' in a desegregation district is to pay tuition elsewhere for one year, then you can use open enrollment. This would be a bad message to send, it would affect only those financially able to afford private or nonresident public school tuition, and it would be ignoring the District's good faith efforts to desegregate its

[2] The following districts have desegregation plans and the authority to restrict open enrollment under those plans: Burlington, Cedar Rapids, Davenport, Des Moines, Ft. Dodge, Muscatine, Sioux City, South Tama, and Waterloo.

system." In this case, the parents were not trying to circumvent the desegregation plan by enrolling their child in private school. However, the good intentions of these particular parents do not mean that the State Board or the District should create a loophole which could gut the District's desegregation efforts. In addition, Stephanie's attendance at Central Middle School next year would improve the racial balance at the school because she is a nonminority, and Central has a substantially higher percentage of minority students than the District as a whole. In determining eligibility of a student to open enroll, the District looks at the attendance center where the student would attend the next year. Since the District does not allow nonminority students to leave Central because of the high minority student percentage, a nonminority student's absence from the school adversely affects the ratio of nonminority to minority students. Regardless of where she came from, Stephanie's absence at Central next year will adversely impact the school's racial balance, and thus the District's desegregation plan. Therefore, the District correctly determined that even though she has been attending private school, her transfer out of the District for next year would negatively impact the District's desegregation plan.

Some parents questioned how the transfer of only one nonminority student could make any difference in the minority/nonminority ratio for their building, and calculated that exit of their child would make no mathematical difference in the ratio. The District pointed out that even if the transfer of one student would make no difference, transfer of some number of students would clearly make a difference, and therefore it does not allow any nonminority student to exit a building closed to open enrollment. This position by the District is reasonable.

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

Thus we have a conflict between the right of parents to choose their children's schools, and the constitutional requirement of integration and the obligation of the District to implement it. Some of the parents state that their children's best interest should override the District's desegregation plan. 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, 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.

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.

When determining the meaning of a statute, we first must decide if it is ambiguous. If it is not, we apply the plain meaning of the statute. In this case, the individual sections of the statute are not ambiguous when considered separately. However, when they are considered together, the ambiguity arises. The sections of the statute conflict. Therefore, we apply the rules of statutory construction. Citizen's Aide/Ombudsman v. Miller, 543 N.W.2d 899, 902 (Iowa 1996).

If a general provision of a statute conflicts with a special provision, the provisions are to be construed to give effect to both if that is possible. If it is not, the special provision prevails as an exception to the general provision. Iowa Code section 4.7 (1997). In this case, sections 282.18(1) and 282.18(18) apply generally to all open enrollment cases. Section 282.18(3) applies specifically to those districts which are subject to voluntary or court-ordered desegregation plans. It is not possible to reconcile these provisions to give effect to both for districts with desegregation plans. Either the parents and the State Board are given broad discretion to choose the school district for these children, or the District is allowed to deny their requests for open enrollment because their leaving their assigned building and the District would have an adverse impact on the District's desegregation plan. Therefore, under this rule of statutory construction, section 282.18(3) would prevail only as to those districts subject to a desegregation plan. This is an exception to the general rule, which is that parents are given wide choice as to schools (282.18(1)), and that in appeals to the State Board, the State Board is to exercise broad discretion to achieve just and equitable results in the best interest of the affected child or children (282.18(18)).

On the other hand, there is a second rule of statutory construction, which states that "If statutes enacted at the same or different sessions of the legislature are irreconcilable, the statute latest in date of enactment by the General Assembly prevails. If

provisions of the same Act are irreconcilable, the provision listed last in the Act prevails." Iowa Code section 4.8. In this case, the open enrollment statute was enacted in 1989, and included both 282.18(1) and a predecessor to 282.18(3). The language which allows a district to deny open enrollment if there is an adverse impact on the desegregation plan was added in the 1991 Code. Section 282.18(18) was not added until 1992. According to this rule of statutory construction, the State Board's broad authority to exercise discretion contained in 282.18(18) would prevail over section 282.18(3).

However, in matters of statutory construction, Iowa Code section 4.7 overrides Iowa Code section 4.8. Citizen's Aide/Ombudsman v. Miller, 543 N.W.2d 899, 903 (Iowa 1996). "[A] specific statute is not controlled or nullified by a general statute, and the more specific statute is given precedence over the more general one, regardless of priority of enactment, absent clear intention otherwise." Laird v. Ramirez, 884 F.Supp. 1265, 1275 (N.D.Iowa 1995).

Therefore, section 282.18(3), which specifically says that districts subject to desegregation plans may deny open enrollment if the transfer would negatively impact the desegregation plan, prevails in this case. The Waterloo District had the authority to deny open enrollment to these students, because their transfer out of their assigned building and out of the District 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 27, 1997, which denied the appellants' requests for open enrollment for their children for the 1997-98 school year, on the grounds the transfers would adversely impact the District's desegregation plan, is hereby recommended for affirmance. There are no costs of this appeal to be assigned.

_____ _____

DATE

AMY CHRISTENSEN, J.D.
ADMINISTRATIVE LAW JUDGE

It is so ordered.

_____ _____

DATE

CORINE HADLEY, PRESIDENT
STATE BOARD OF EDUCATION