IOWA STATE BOARD
OF EDUCATION
(Cite as 14 D.o.E. App. Dec. 165)

In re Christina E. Hamous	:	
Barbara Hamous, Appellant,	:	
v.	:	DECISION
Cedar Rapids Community School District, Appellee.	: :	
		[Admin. Doc. #3874]

The above-captioned matter was heard telephonically on May 5, 1997 before a hearing panel comprising Dr. Maryellen Knowles, consultant, Bureau of Administration, Instruction & School Improvement; Dr. Ron Riekena, consultant, Bureau of Food and Nutrition; and Amy Christensen, designated administrative law judge, presiding. The Appellant, Mrs. Barbara Hamous, was present telephonically and was unrepresented by counsel. Mrs. Hamous' husband, Bruce, was also present telephonically. The Appellee, Cedar Rapids Community School District [hereinafter, "the District"], was also present telephonically in the person of Mr. Nelson Evans, Director of Instruction and Human Resources. The District was unrepresented by counsel.

The record was held open for two weeks for the District to submit evidence of the minority population at Johnson school for the 1996-97 school year. This information was submitted, and received by the State Department of Education on May 9, 1997. The information is a part of the record in this case. (The District also submitted information regarding a son of the Appellant who is not the subject of this appeal.)

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). The administrative law judge finds that she and the State Board of Education have jurisdiction over the parties and subject matter of this appeal.

The Appellant seeks reversal of a decision of the Board of Directors [hereinafter, "the Board"] of the District made on February 10, 1997, which denied her application for open enrollment on the grounds that the transfer would adversely impact the District's desegregation/integration plan.

I.
FINDINGS OF FACT

Mr. and Mrs. Hamous have three children, a son Brandon who attends Marion High School, a son James who is a seventh grader and attends All Saints Catholic School, and Christina, who is in first grade at All Saints Catholic School. All of the children have never attended Cedar Rapids District schools, because they have always attended private schools. If they did not attend All Saints school, James would be at McKinley Middle School and Christina would be at Johnson Elementary in the Cedar Rapids District. Mrs. Hamous applied for open enrollment for James and Christina to the Marion District. The request was granted for James but denied for Christina.

Mrs. Hamous is employed as a nurse at Marion High School. She would like her two younger children to attend Marion schools because she works at Marion High School, and their older brother is open enrolled to Marion High School. If granted open enrollment, Christina could attend elementary school across the street from her mother.

It would be difficult for the family if Christina attends school in Cedar Rapids while her siblings and mother go to Marion schools. Mrs. Hamous has concerns about her daughter's safety getting to and from school, and while she is home by herself. Arranging transportation for Christina would be difficult. The Cedar Rapids District and the Marion District do not always have the same days off from school. Christina would feel left out if not allowed to transfer, because she would be the only child in the family not allowed to ride to school with her mother.

Mr. Evans manages open enrollment for the Cedar Rapids District. The District's open enrollment policy contains a paragraph which states when open enrollment would adversely affect the District's desegregation-integration plan. The District has a formally adopted desegregation plan with enrollment guidelines.

The District's Open Enrollment Policy states in Procedure 602.6a, "The Desegregation-Integration Plan would be adversely affected if: 1) the transfer requests to other districts would raise or sustain the minority enrollment of the District attendance center within ten per cent of the Department of Education guidelines. ...". Mr. Evans testified that once this percentage of minority student population is reached in any building, the District's Desegregation Plan applies to that school.

Department of Education guidelines contained in *The Race Equity Review Process*, approved April 12, 1990, state that when a building's minority enrollment is more than 20 percentage points above the District's minority enrollment percentage as a whole, the building is in violation of the guidelines.

Mr. Evans testified the District uses the figure of within ten percent of the Department of Education guidelines because of the small numbers of minority students in the District. As he explained, the exit or addition of a very small number of students could change the minority percentage a great deal. In order to avoid going over the State guidelines, the District has built in the ten per cent cushion.

The District's minority student percentage for the 1996-97 school year is 11%. The minority student percentage at Johnson Elementary is 33% for the 1996-97 school year. The minority student percentage at McKinley Middle School is 15% for the 1996-97 school year. The District bases these percentages on the student count made each school year in September. The percentages may change each year.

Because of its high minority student population, the District will not allow non-minority students to leave Johnson Elementary School through open enrollment for the 1997-98 school year.

The Desegregation-Integration Plan (Procedure 602.8a) provides as follows: "Non-minority students who live in the Grant Wood, Johnson, or Polk attendance areas must attend at their home attendance site." Although there was some confusion regarding the issue at the hearing, McKinley school has no such restriction, and nonminority students may leave McKinley through open enrollment. There have been no changes in these restrictions on Johnson and the lack of restrictions on McKinley for the past several years. (During the 1994-95 school year, the minority percentage at Johnson was 29.9%, and that at McKinley was 19.3%. During 1995-96 school year, the minority student population was 32% at Johnson and 18% at McKinley.)

Therefore, since Christina would attend Johnson Elementary if she were not attending All Saints Catholic School, the District denied her application for open enrollment because her transfer would adversely affect the District's desegregation plan. The District granted James' application, because he would attend McKinley Middle School if he were not attending All Saints, and there is no block on transfer of non-minority students from McKinley. (This is also why Brandon was granted open enrollment several years ago, because his transfer was from McKinley.)

At the hearing, Mrs. Hamous testified to prior open enrollment requests made for her two older children. There was some confusion regarding these requests, and Mr. Evans submitted supplemental information after the close of the hearing. The records of the District show that the District considered James to be a fourth grader during the 1994-95 school year. In fact, James was a fifth grader during the 1994-95 school year. The District has no record of an application for open enrollment for James for the 1995-96 school year, when James would have been a sixth grader. If Mrs. Hamous can show the District her application for James for the 1995-96 school year, and if the application was

denied for adverse impact on the desegregation plan, this denial would have been in error. Mrs. Hamous also testified she submitted a previous application for the 1997-98 school year for James in May 1996, which was also denied. The District has no record of this application. Again, if Mrs. Hamous can show the District her application and it was denied for adverse impact, it would have been mistakenly denied. However, even if a mistake was made regarding prior applications for James, it does not change the analysis of the application at issue in this case: the application for Christina for the 1997-98 school year.

The District considers the entire number of children in an attendance center area, not just those students who actually attend the school, when it plans how the District staffs the school, and when it determines whether the school population reflects the population of the attendance area as a whole.

The District's open enrollment policy contains a sibling preference policy. However, the determination of adverse impact on the Desegregation Plan takes precedence over the sibling preference policy when the District acts on open enrollment requests.

II.
CONCLUSIONS OF LAW

As was discussed above, there is conflicting evidence regarding prior open enrollment applications for James. However, this appeal concerns only the open enrollment request for Christina, so the information regarding prior applications for James is irrelevant, so long as the District can show it acted according to Iowa law and its own open enrollment/desegregation plan when it denied the application for Christina.

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 child 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."

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 the application, unless the transfer of the student will negatively impact the district's desegregation plan. Id.

In this case, the parents have very important and valid reasons for requesting open enrollment for Christina. They would like her to be able to ride to school with her mother and brothers, and have the same school schedule as the rest of her family. She is only in first grade, and clearly not old enough to take care of herself without supervision. The Hamouses are justifiably concerned about Christina's safety. We are very sympathetic to the difficulties encountered by families where both parents work. Mrs. Hamous is genuinely interested in what is best for Christina, and is seeking to obtain it by filing for open enrollment.

If the Cedar Rapids District did not have a desegregation plan, there would be no question that Mrs. Hamous could open enroll Christina as requested, so long as the application was filed in a timely manner. However, the District does have such a plan. It contains objective criteria for determining when an open enrollment request would adversely affect the District's desegregation plan as 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).

State Department of Education rules require school boards to take affirmative steps to integrate students as a part of general school accreditation standards. 281 IAC 12.1.

The Cedar Rapids District developed its open enrollment/desegregation policy to conform to these requirements, to conform to the requirements of Iowa Code section 282.18(12), and to follow the State Board rule and guidelines on nondiscrimination. Current guidelines are contained in *The Race Equity Review Process*, adopted April 12, 1990. The Cedar Rapids District policy contains objective criteria for determining when

open enrollment transfers will adversely impact the District's desegregation plan, as required by 282.18(12)(1997). Board Regulations 602.6 and 602.6a, Open Enrollment, and Board Procedure 602.8a, Desegregation-Integration. For buildings with a minority student population greater than 10 percentage points above the District's minority percentage, nonminority students may not transfer out of the building. One of these buildings is Johnson Elementary, which has a minority student population percentage of 33% for the 1996-97 school year, as compared to 11% for the District as a whole. Considering the District's evidence that it has a relatively small number of minority students, that the exit of even a few students can therefore change the minority percentage a great deal, and that therefore the District needs a cushion of 10% to avoid violating the State Board guidelines, the District's use of the 10% figure is reasonable. Furthermore, in the case of Johnson school, the school does not conform to the State Board guidelines this year since its minority student percentage is more than 20 percentage points above the district average.

Mrs. Hamous questioned how transfer of Christina could negatively impact the District's desegregation plan, since she attends All Saints Catholic School, and has never attended Cedar Rapids schools. 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 system." In this case, the Hamouses were not trying to circumvent the desegregation plan by enrolling their children in private schools. 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, the District uses the entire population in the attendance center area, not just the students who actually attend, to make planning and staffing decisions. Therefore, the District correctly determined that even though Christina has always attended Catholic school, her transfer out of the District, and Johnson school in particular, could negatively impact the District's desegregation plan.

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

Thus we have a conflict between the right of parents to choose their child's schools, and the constitutional requirement of integration and the obligation of the District to implement it. Mrs. Hamous asks us to hold that Christina's best interest overrides the District's 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, non-minority and minority pupil ratios are to be maintained according to the plan, and districts may deny requests for open enrollment if the transfer would adversely impact the desegregation plan.

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 only 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. Either the parents and the State Board are given broad discretion to choose the school district for Christina, or the Cedar Rapids District is allowed to deny the request for open enrollment because Christina's leaving 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 (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 Cedar Rapids District had the authority to deny open enrollment to Christina, because her transfer out of the District would negatively impact the District's desegregation plan.

We note that the District's open enrollment policy contains deadlines for submission of open enrollment applications and Board actions which were based on the old deadlines in the Iowa Code. Since the Iowa Code deadlines have changed, the District should update its open enrollment policy. Mrs. Hamous pointed out in her appeal affidavit that the Board did not act according to the deadlines in its own policy. However, since the deadline for submission of an application by parents was changed from October 30 to January 1 by the legislature, and the dates in the District's policy are based on the old date, we hold that the District is not bound by the outdated deadlines in its own policy, so long as it acts to correct those deadlines in a reasonable time period.

III.
DECISION

For the foregoing reasons, the decision of the Board of Directors of the Cedar Rapids Community School District made on February 10, 1997, which denied Mrs. Hamous' request for open enrollment for her daughter Christina for the 1997-98 school

year, on the grounds the transfer 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