IOWA STATE
BOARD OF EDUCATION
(Cite as 13 D.o.E. App. Dec. 279)

In re J'Nae Peterman	:	
	:	
Jodi Daywitt,	:	
Appellant,	:	
	:	***PROPOSED***
v.	:	***DECISION***
Cedar Rapids Community School	:	
District, Appellee.	:	***[Adm. Doc. # 3775]***

The above-captioned matter was heard telephonically on June 3, 1996, before a hearing panel comprising Erik Eriksen, consultant, Bureau of Instructional Services; Klark Jessen, Consultant, Office of the Director; and Ann Marie Brick, J.D., legal consulant and designated administrative law judge, presiding. Appellant was telephonically "present," unrepresented by counsel. The Appellee, Cedar Rapids Community School District [hereinafter the "District"], was also "present" in the person of Nelson Evans, director of instruction and human resources, also *pro se*.

An evidentiary hearing was held pursuant to Department of Education Rules found at 281--Iowa Administrative Code 6. Appellant seeks reversal of a decision by the Board of Directors [hereinafter the "Board"] of the District made on April 8, 1996, denying her application for open enrollment. The timely-filed application for open enrollment was denied under the District's desegregation policy.

Authority and jurisdiction for this appeal are found in Iowa Code section 290.1 (1995).

I.
FINDINGS OF FACT

The Administrative Law Judge finds that she and the State Board of Education have jurisdiction over the parties and subject matter of the appeal before them.

Jodi Daywitt is the single-mother of two young children. At the time of this appeal hearing, she had a baby who was nine months old and a daughter, J'Nae, who was five. Appellant works at the Kwik Trip Corporation in northeast Cedar Rapids, Monday through Friday. She has to work some days and some nights and

often goes to work as early as 6:00 a.m. The day care provider for J'Nae is in the College Community School District. When J'Nae begins kindergarten in the fall of 1996, it will be necessary for her to be picked up for school at the day care provider's. Since Appellant does not have a satisfactory arrangement for day care in the Cedar Rapids District, she seeks open enrollment for her daughter to attend in the College Community School District commencing in the fall of 1996.

Although her application for open enrollment was timely-filed,[1] her application was denied under the District's open enrollment/desegregation policy. J'Nae is a white student. Her attendance center (Grant Wood) has been closed to open enrollment because the departure of non-minority students from the school would adversely affect the District's efforts to balance the minority/non-minority ratio. In her affidavit of appeal, Appellant states that "J'Nae has been denied because of the 'Desegregation-Integration Plan' which I know nothing about."[2] Therefore, she filed this appeal with the State Board.

Nelson Evans is the director of instruction and human resources for the District. He is responsible for monitoring the operation of the Open Enrollment/Desegregation Policy for the District. He explained that the policy as it presently operates, is the same policy that was upheld by the State Board of Education in the appeal of In re William Croskrey, 10 D.o.E. App. Dec. 323 (1993), aff'd. In re Phillip Brandt, 12 D.o.E. App. Dec. 12-14 (1994). Mr. Nelson stipulated that the Findings of Fact regarding the policy operation as explained in the Croskrey appeal should be updated and adopted here. We therefore take judicial notice of the facts found therein.

As described in that appeal, the District has been operating under a voluntary desegregation plan since the 1970's. At that time, it was found to be out of compliance with State-monitored race equity guidelines. The voluntary plan addresses open enrollment applications for transfers within the District as well as statutory open enrollment out of the District. It is based upon the State guidelines establishing that a school district is in violation of desegregation efforts if a school building's racial composition exceeds the District's minority student population plus 20%.

[1] The deadline Appellant was required to meet was June 30, 1996, which is the deadline for students commencing kindergarten in the Fall of 1996. 281--Iowa Administrative Code 17.7.

[2] This policy is contained in Cedar Rapids Community School District regulations 602.6 and 602.6(a).

In Cedar Rapids, the minority student population was 12% in the fall of the 1995-96 school year. The figure, when plugged into the State formula, means that a building approaching 32% minority population would be in danger of being out of compliance with the State standard. In order to avoid actually reaching the noncompliance figure (32%), the District Board set as its policy for "closing its doors" to transfers that worsen the ratio balance (whether into or out of the building) a figure of 10% above the District-wide minority population figure.[3] This translates to a 22% minority student population in any attendance center, given the current 12% minority student figure District-wide.

Grant Wood Elementary where J'Nae is scheduled to attend has a minority population which exceeds 22%. Accordingly, requests by minority students to transfer into Grant Wood have been denied just as non-minority applications out of Grant Wood have been denied. This is done in an effort to prevent a further imbalance of the minority/non-minority student ratio. Grant Wood has an extended day care program (6:30 a.m. to 6:30 p.m.) which would be available to Appellant at her attendance center.

II.
CONCLUSIONS OF LAW

Iowa's open enrollment law took effect July 1, 1989, creating an advance application process beginning in the fall of 1989 for open enrollment effective in the 1990-91 school year. The law included an exception for those school districts under voluntary or court-ordered desegregation, including the District here, whereby they could opt not to participate the first year

[3] It should be noted that in comparing the Facts of the Croskrey appeal to the Facts of the present case, the ALJ noticed that there has been a change in District policy. In 1993, the District policy used a margin of 15% above the District-wide minority population figure to "trigger" the closure of an attendance center. That margin has now been reduced to 10%, which appears to be a significant restriction. The hearing panel did not have a copy of the 1995-96 policy before it when it heard this appeal. The panel accepted as true Mr. Nelson's statements that the policy was identical to the one upheld by the State Board in the case of In re William Croskrey. The merits of the restriction and the margin or whether or not it has legal significance cannot be reached in this appeal. However, the District should be prepared to present evidence on this matter the next time the open enrollment/desegrega-ion policy is challenged on appeal. See also, In re Phillip Brandt, 12 D.o.E. App. Dec. 14 (1994).

and use that time to make preparations and devise a policy for interrelating open enrollment and district desegregation plans.[4] That provision of the law reads as follows:

> The board of directors of a school district subject to volunteer [sic] or court-ordered desegregation may vote not to participate in open enrollment under this section during the school year commencing July 1, 1990, and ending June 30, 1991. If a district chooses not to participate in open enrollment under this paragraph, the district shall develop a policy for implementation of open enrollment in the district for that following school year. 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 §282.18(14)(1993). Thus the legislature, in creating and adopting the open enrollment law, which by its own terms is designed "to permit a wide range of educational choices for children enrolled in schools in this state and to maximize ability to use those choices," still included provisions that would negatively affect a parent's right to school choice. One of those provisions is clearly to prevent the open enrollment law from upsetting a school district's desegregation efforts.

> . . . In all districts involved with volunteer [sic] or court-ordered desegregation, minority and non-minority pupil ratio shall be maintained according to the desegregation plan or order. The superintendent of a district subject to volunteer 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 §282.18(4)(1993). It is apparent that the general assembly's language reflects a priority for a public policy in favor of continued desegregation over a public policy in favor of parental choice. When the two are in conflict, as they are in this case, the latter gives way to the former.

---

[4]The District in this case did not exercise its option to sit out the first year of open enrollment, but participated fully as a sending and receiving district.

Finding no basis in law or fact in which to overturn the Board, the decision to deny Appellant's application for open enrollment for J'Nae Peterman is recommended for affirmance.

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

III.
Decision

For the foregoing reasons, the decision of the Cedar Rapids Community School District Board of Directors to deny open enrollment for J'Nae Peterman is hereby recommended for affirmance. There are no costs of the hearing to be assigned under Iowa Code section 290.

Date	Ann Marie Brick, J.D. Administrative Law Judge

It is so ordered.

Date	Corine Hadley, President State Board of Education