

**IOWA STATE DEPARTMENT
OF EDUCATION**

(Cite as 13 D.o.E. App. Dec. 267)

In re Samantha Petersen :

Katherine Petersen, :
Appellant, :

v. : DECISION

Des Moines Independent Community :
School District, :
Appellee. : [Admin. Doc. # 3725]

The above-captioned matter was heard telephonically on May 20, 1996, before a hearing panel comprising Sharon Willis, Bureau of Data and Word Processing; Milt Wilson, Bureau of School Administration and Accreditation; and Ann Marie Brick, J.D., legal consultant and designated administrative law judge, presiding. The Appellant, Katherine Petersen, could not be present. Samantha Petersen was represented at the hearing by her aunt, Christine Penquite, unrepresented by counsel. The Appellee, Des Moines Independent Community School District [hereinafter "the District"], was also "present" telephonically in the person of Dr. Tom Jeschke, director of student services, also *pro se*.

A hearing was held pursuant to Departmental rules found at 281--Iowa Administrative Code 6. Appellant sought reversal of a decision of the Board of Directors [hereinafter "the Board"] of the District made on February 6, 1996, which denied her application for open enrollment out of the District, beginning in the 1996-97 school year.

Authority and jurisdiction for this appeal are found in Iowa Code §282.18(5) (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.

Appellant Katherine Petersen is the single parent of five-year old Samantha who will attend kindergarten in the fall of 1996. Appellant and her daughter live in the Des Moines school district in a home owned by Samantha's grandmother. Appellant works 44 hours a week at the Fareway Grocery Store in Altoona, Iowa, as a check-out clerk. She makes the payments on the home which is owned by her mother.

Appellant relies on both her mother and her sister, Chris Penquite, for both financial and emotional support. They also provide day care for Samantha. Ms. Penquite's family lives in Altoona, next door to Samantha's grandmother. Samantha is left at the grandmother's every day at 7:30 a.m. when Appellant leaves for work. Ms. Penquite testified that if Samantha can open enroll to the Altoona School District, the school bus can pick her up in front of the grandmother's home. However, if Samantha has to attend school in Des Moines, it will be very difficult for the family to transport her to and from school each day. Although the family realizes it would be best for Katherine and Samantha to live in Altoona and attend school there as a resident, they have been unable to find affordable housing there. For that reason, the family sees open enrollment as their only realistic option.

Dr. Jeschke testified that Appellant's application for open enrollment was timely-filed even though it was filed after October 30, 1995.¹

On February 6, 1996, Appellant's timely-filed application for Samantha to attend kindergarten in the Altoona Community School District during the 1996-97 school year was denied. The Superintendent recommended that the application, although otherwise eligible, be denied because its approval would adversely affect the District's projected minority/nonminority ratio for the 1996-97 school year. The transcript of the February 6, 1996, Board meeting reflects the following:

Kindergarten applications received after October 30: The following applications for kindergarten students were received after October 30. State law allows

¹ The deadline for open enrollment applications is October 30 of the preceding school year. The deadline for perspective kindergarten students is June 30 of the same year. Iowa Code section 282.18(2)(1995). Beginning July 1, 1996, the Legislature has lengthened the period of open enrollment for children in grades 1 through 12 to January 1 of the year preceding the school year for which open enrollment is sought. S.F. 2201, 76th G.A., 2d Sess. (1996).

parents of kindergarten students to make application between July 1 and June 30 of

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the school year preceding the school year for which the enrollment is to start. Because the decision to approve students making application between July 1 and October 30 is affected by criteria established to protect the integrity of the District's desegregation plan, District policy encourages parents of kindergarteners to make application requests prior to October 30 of the preceding year. In keeping with the District's policy, otherwise eligible kindergarten residents whose applications are received after October 30 are placed at the end of the random computer list in the order in which they are received.

Bd. tran. p. 2, February 6, 1996.

Dr. Jeschke testified that Appellant was fortieth on the computer-randomized waiting list as of the date of this hearing. He suggested that the odds were very slim that Samantha would be able to open enroll to Altoona commencing in the Fall of 1996. Dr. Jeschke suggested that Ms. Petersen apply again this year for the 1997-98 school year. In addition, Dr. Jeschke noted that placement on the list does not automatically carry over from year to year. It is necessary to reapply for open enrollment every year.

II. CONCLUSIONS OF LAW

This case involves the delicate balance of two very important public policies: parental choice and effective desegregation of schools. In enacting Iowa's Open Enrollment Act, effective July 1, 1989, our Legislature codified its purpose:

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. ...

Iowa Code §282.18(1) (1995). However, the Law limits parental choice in urban school districts having desegregation policies:

In all districts involved with volunteer [sic] or court-ordered desegregation, minority and nonminority pupil ratios shall be maintained according to the desegregation plan or order. The superintendent of a district

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subject to volunteer [sic] 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.

Id. at (4).

Although the hearing panel sympathizes with Ms. Petersen's attempt to provide an educational and home environment which she feels is most supportive for Samantha's needs, the controlling legal principles for this open enrollment case have already been decided by the Polk County District Court in Des Moines Independent Community School District v. Iowa Dept. of Ed., AA 2432 (June 1, 1995). That case upheld the Des Moines District's Board's right to deny timely-filed open enrollment applications that adversely affect the racial composite of the 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 Samantha Petersen is hereby 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 Des Moines Independent Community School District's Board of Directors made on February 6, 1996, denying Appellant's timely-filed open enrollment request for her daughter, Samantha Petersen, is hereby recommended for affirmance. There are no costs of this appeal to be assigned.

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DATE

ANN MARIE BRICK, J.D.
ADMINISTRATIVE LAW JUDGE

It is so ordered.

DATE

CORINE HADLEY, PRESIDENT
STATE BOARD OF EDUCATION