

to and from day care to the West Des Moines and the Urbandale schools; but the Center does not transport to any of the Des Moines schools.² Appellant lives in the Hillis Elementary School attendance area, which is located in the Des Moines District. She timely-filed her open enrollment application for Dustin to attend kindergarten in the West Des Moines District so he could be transported to the Center after his morning kindergarten class. Her application was denied under the District's open enrollment/desegregation policy.

Dr. Jeschke explained the operation of the open enrollment/desegregation policy as follows:

The District determines the eligibility or ineligibility of each applicant for open enrollment on a case-by-case basis. The child's racial status is verified; then the ratio of minorities to non-minorities at the child's attendance center is determined; and it is then determined whether the child has siblings previously approved for open enrollment.

The District's existing minority ratio is 1 minority student for every 3.15 nonminority students. This means that for every minority student who open enrolls out of the Des Moines District, roughly three non-minority students are granted open enrollment. Non-minority students wishing to open enroll out of the Des Moines District who have been deemed ineligible under the District's Desegregation Policy are placed on a waiting list by a computer randomization process. If a minority student leaves the District under open enrollment, then the next three non-minority students at the top of the list will be granted open enrollment for the 1996-97 school year.

The parent determines the minority status of the child. In the application for open enrollment, there is a direction for the parent to check one of the following categories:³

²Appellant was asked if she had requested this service from her employer. She responded that she had not done so "in writing." However, she didn't feel that the Center would provide this service since most of the children went to Urbandale and West Des Moines schools. This prompted the hearing panel to suggest that perhaps if the Center provided transportation to Des Moines schools, Des Moines parents would enroll their children there for child care.

³This form is prepared by the State Department of Education, not the local school district.

White/Not Hispanic	Hispanic
Black/Not Hispanic	American Indian/
Asian/Pacific Islander	Alaskan Native

Under the District's open enrollment policy, nine schools are closed to open enrollment. In other words, these schools' minority ratios exceed 36% and the release of non-minority students from these schools would violate the District's desegregation policy. This Appellant lives in the Hillis attendance area which is not closed to open enrollment.

The District has a "sibling-preference" policy which gives priority to those student applicants who already have a brother or sister attending the receiving district under open enrollment. Since Appellant has no older children who are attending West Des Moines Community School District, the sibling preference policy is not applicable in this case.

The District's practice of denying open enrollment applications under this policy has been upheld by Judge Bergeson in his "Ruling on Petition for Judicial Review" which was rendered June 1, 1995.

In the present case the decision to grant or deny the open enrollment application was made solely on the minority status of the student. This information was ascertained from the application as completed by the parent. The District Board made no effort to weigh the parent's reasons for seeking open enrollment. "Good cause" was not an issue in the Board's decision.

Even though Appellant's application was timely-filed,⁴ because it was filed after October 30th, her application was placed at the end of the random computer list. This action was taken consistent with the District's policy "that all otherwise eligible kindergarten students whose applications are received after October 30th are placed at the end of random computer list in the order in which they are received." (Bd. tr. 2-6-96 at p. 2.)

⁴The deadline she was required to meet was June 30, 1996, for students commencing kindergarten in the Fall of 1996.

Dr. Jeschke advised Ms. Fish at the hearing that Dustin was currently 42 on the waiting list. He also reminded her that she

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would need to re-apply for open enrollment between July 1 and October 30, 1996, to be eligible for open enrollment for the 1997-98 school year.⁵

The final matter, Appellant testified that Dustin is not a minority student and that he has no older siblings who have previously open enrolled from Des Moines to the West Des Moines District.

II. FINDINGS OF FACT

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 Law, 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. 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 §282.18(1) (1995).

A portion of the new law was directed specifically to the school districts under court-ordered or voluntary desegregation plans,⁶ including the District here. That provision 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

⁵Effective July 1, 1996, the legislature has lengthened the period of open enrollment for children in grades 1-12 to January 1 of the year preceding the school year for which open enrollment is sought. However, that does not change the outcome in this case. See, S.F. 2201, 76th Gen Assem., 2d Sess. (1996).

⁶No school districts in Iowa are currently under court-ordered desegregation. Nine school districts are subject to an annual review and required to report to the State Board of Education due to race equity concerns. An additional three districts also report voluntarily.

enrollment under this paragraph, the district shall develop a policy for implementation of open enrollment in the district for that following

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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.

Id. at par. (14) (1993).

The law also presently includes a directive to those urban school districts regarding the maintenance of existing desegregation plans as they affect the racial composite:

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.

Id. at par. (4) (1995).

The role of the State Board of Education in appeals brought under Iowa Code chapter 290, is to determine whether the local school board's decision comports with existing policy and law. More specifically, since the Board's policy has been judicially approved, the only question that remains is whether the District followed its own policy when it denied these open enrollment applications.

In the appeal under consideration here, the only operative question is whether this is a "**non-minority**" student who is ineligible because his transfer would adversely affect the District's existing minority/non-minority ratio. (Bd. tr. at 3.)

Since Dustin is a non-minority, the application was properly denied by the District.

Although the hearing panel sympathizes with the Appellant's reasons for seeking open enrollment and her attempt to provide an educational environment which she feels is most supportive for her child'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 Department of Education, AA2432 (June 1, 1995).

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That case upheld the Des Moines District Board's right to deny timely-filed open enrollment applications that adversely affect the racial composite of the District. The only basis upon which the State Board of Education could overrule this open enrollment case is if the District's policy was not appropriately or correctly applied to the facts of this case. Finding no basis in law or fact to overturn the Appellant's case, the District's decision to deny her application for open enrollment 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 Des Moines Independent Community School District's Board of Directors made on February 6, 1996, denying Appellant's open enrollment request for Dustin Fish to attend the West Des Moines Community School District for the 1996-97 school year, is hereby recommended for affirmance. There are no costs to this appeal to be assigned.

DATE

ANN MARIE BRICK, J.D.
ADMINISTRATIVE LAW JUDGE

It is so ordered.

DATE

CORINE HADLEY, PRESIDENT
STATE BOARD OF EDUCATION