

**IOWA STATE BOARD  
OF EDUCATION**  
(Cite as 13 D.o.E. App. Dec. 200)

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***In re Nicholas Treanor, Michael  
Lamb & Jonathan Van Rsywyk***

Terry Treanor, Lynn Lamb,  
& Diane Van Rsywyk, Appellants,

v.

DECISION

Des Moines Independent Community  
School District, Appellee.

[Adm. Doc.#3698,  
3702, & 3708]

The above-captioned matters were consolidated and were heard together on February 21, 1996, before a hearing panel comprising Edie Eckles, consultant, Bureau of School Administration and Accreditation; Klark Jessen, consultant, Office of the Director; and Ann Marie Brick, J.D., legal consultant and designated administrative law judge, presiding. Appellant, Terry Treanor, was not available for the hearing, but was represented by her husband, Brian Treanor, who appeared in person, unrepresented by counsel. Appellant Lynn Lamb's and Appellant Diane Van Rsywyk's appeals were dismissed following their failure to appear. The record indicates proper notice was given and received by certified mail. Appellee, Des Moines Independent Community School District [hereinafter "the District"], was also present 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. Authority and jurisdiction for this appeal are found in Iowa Code § 282.18(5) (1995).

Appellant seeks reversal of a decision of the Board of Directors [hereinafter "the Board"] of the District made on November 21, 1995, which denied Appellant's application for open enrollment beginning in the 1996-97 school year.

**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 consolidated appeals before them.

Terry and Brian Treanor live on the extreme east-end of Pleasant Hill one block from the Southeast Polk Community School District. They have three children who presently attend St. Joseph's Catholic School in the eastern part of Des Moines. The boys are Matthew, age 9; Joseph, age 10; and Nickolas, who is 13. Only Nickolas is seeking open enrollment to Southeast Polk.

Although Nickolas has never attended a Des Moines public school, he is in the Hiatt Middle School attendance center, which has been closed to open enrollment. Dr. Jeschke testified that for the 1995-96 school year, the District's minority/non-minority composite is 24.1%. Under the District guidelines, when the minority population of any building in the Des Moines District is 15% or more than the District average (39.1%), then that school is closed to non-minorities who want to open enroll out. For the 1995-96 school year, nine schools have been closed to open enrollment; eight elementary schools and one middle school. Hiatt is the middle school which has been closed with a minority population of 40.05%.

Mr. Treanor explained that the reason he and his wife seek open enrollment is because St. Joseph's grade school only goes up to the 8th grade. Since Dowling charges tuition, which is more than they would like to pay, they want their oldest son to attend Southeast Polk Community School District for the 8th grade and continue there through graduation. Although his open enrollment application was timely-filed, Nickolas was denied open enrollment as a non-minority student who lives in an attendance area which has been closed to open enrollment.'

Mr. Treanor had several concerns about the application of the open enrollment/desegregation policy because it operates to limit which children are allowed to exercise "free choice" under the Open Enrollment Law. Specifically, he testified that it was another form of racism to decide whether or not to grant an open enrollment request based on the racial identity of the student. That is why he did not fill out the section of the open enrollment form that asked him to identify the race of his child. After Dr. Jeschke explained the Federal and State requirements which require the District to identify and count children on the basis of their race in order to prevent racial isolation or imbalance within the school district, Mr. Treanor testified that his son was half hispanic -- "but that should not be relevant to

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1Mr. Treanor was very concerned about the fact that since his children had never attended school in the Des Moines District, their attendance area should be irrelevant. He reasoned that if Nickolas has never attended school at Hiatt, how could there be a "negative impact" on the school when he left? Dr. Jeschke advised him that when a student applies for open enrollment, that student is counted by the sending district, in order for funds to be generated to send to the receiving district for the student's education. At the present time, the funds following the student to Southeast Polk would be approximately \$3,600. In addition, the District will have to send those funds to southeast Polk for the 1996-97 school year even though the District will not be reimbursed by the State until the following year.

whether or not he gets to open enroll out of the District." Dr. Jeschke then explained to Mr. Treanor that if his son was half hispanic, and if Mr. Treanor wanted to present documentation to that effect, his son's open enrollment application would be granted under the portion of the District's policy that allows minority students to leave a building that is closed to open enrollment to non-minorities.

## II. CONCLUSIONS OF LAW

Although Appellant was given the opportunity to present his case for seeking open enrollment out of the District, this was not a hearing to determine the existence of "good cause." His application for open enrollment was timely-filed and there is no evidence that the reason why he wished to open enroll out of the District ever entered into the Board's determination regarding his eligibility for open enrollment. As the State Board has previously stated:

[O]ur use of the term "application" -- which implies that the parent seeks board approval of the open enrollment request -- is a misnomer. If the form is timely filed, the resident district board has no discretion to deny the open enrollment, unless the district is under voluntary or court-ordered desegregation.

In re Kelsey Anderson, et al., 11 D.o.E. App. Dec. 321, 323 (1994).<sup>2</sup>

In the appeal under consideration here, the only operative question is whether the desegregation policy applied in denying Appellant's open enrollment application was the same policy that already has been ruled upon by the State Board of Education in the case of In re Scott A. Wilson, et al., 11 D.o.E. App. Dec. 238 (1994) which was affirmed in part by the Polk County District Court in Des Moines Ind. Comm. Sch. Dist. v. Iowa Dept. of Education, AA 2432 (June 1, 1995). Both the State Board decision and the Polk County District Court upheld the portion of the Des Moines policy that denies open enrollment to non-minority applicants who are assigned to buildings where the minority student percentage is 15% points above the District-wide minority ratio.

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<sup>2</sup>The state's requirement that parents list their reasons for seeking open enrollment on a timely-filed open enrollment application has created some confusion among both parents and school board members. The school board often feels the reasons must justify the approval of the application. The Legislature recently passed Senate File 2201, effective July 1, 1996, which eliminates the need for parents to give a reason for open enrolling when the application is timely filed. The parent need only state the reason for filing a late application for open enrollment in order to determine "good cause" for late filing under the statute. S.F. 2201, 76th G.A., 2d Sess. (1996).

We find that the policy applied by the District in this case is the same policy that has been upheld on appeal. Therefore, the controlling legal principles have already been determined by the Court.

The next question, then, is whether or not the Appellant's son is a **non-minority** student who is ineligible for open enrollment because his transfer would adversely affect the existing minority/non-minority ratio of the building in his attendance area. Under the controlling legal principles, if Appellant's son is a non-minority, the District Board properly denied the open enrollment application. However, if Appellant's son is properly classified as a minority student, then his application was wrongfully denied.

The open enrollment application presented to the District Board had no designation of minority status. It was left blank. Under these conditions, the District Board has a right to assume that the student is a non-minority and treat the application accordingly. Based on the facts as they existed at the time the open enrollment decision was made by the District Board, the decision to deny the open enrollment application must be upheld. However, if Appellant chooses to present some type of documentation to Dr. Jeschke that identifies his son as half hispanic, then, according to Dr. Jeschke, the application will be reconsidered at the Board meeting following presentation of said documentation.<sup>3</sup>

Finding no basis in law or fact to overturn the District Board's decision denying Appellant's open enrollment application, we recommend the Board's decision be affirmed.

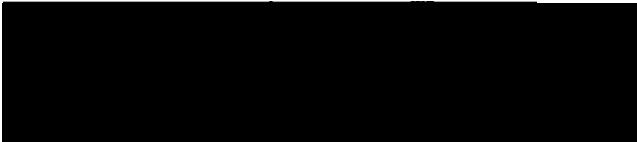
Any motions or objections not previously ruled upon are hereby denied and overruled.

### **III. DECISION**

For the foregoing reasons, the decision of the Des Moines Independent Community School District's Board of Directors made on November 21, 1995, is hereby recommended for affirmance. There are no costs of this appeal to be assigned.

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<sup>3</sup>The "documentation" sufficient to satisfy this process need not be burdensome. It could be something like a birth certificate showing the mother's nationality; school records from St. Joseph's catholic school which may show some ethnic identification. Just something to indicate the designation has not been contrived for the purposes of evading the desegregation policy.



DATE

ANN MARIE BRICK, J.D.  
ADMINISTRATIVE LAW JUDGE

it is so ordered.

A handwritten signature in cursive script that reads "Corine Hadley".

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CORINE HADLEY, PRES  
IDENT STATE BOARD OF  
EDUCATION

DATE