

**Iowa State Board
of Education**
(Cite as 13 D.o.E. App. Dec. 74)

<i>In re Michelle, Emily, Amber, Craig, and Brice Johnson</i>	:	
Lucinda Johnson, Appellant,	:	
v.	:	DECISION
Waterloo Community School District, Appellee.	:	[Adm.Doc. #3695]

The above-captioned matter was heard on February 29, 1996, before a hearing panel comprising Mr. Klark Jessen, Office of the Director; Ms. Mary Jo Bruett, consultant, Bureau of Planning, Research and Evaluation; and Ann Marie Brick, J.D., legal consultant and designated administrative law judge, presiding. The Appellants, Doug and Lucinda Johnson, were present, unrepresented by counsel. The Appellee, Waterloo Community School District [hereinafter "the District"], was present in the persons of Dr. Walter Cunningham, deputy superintendent; Mr. Lloyd Applegate, coordinator of student records, and was represented by Mr. Steven A. Weidner of Swisher and Cohrt, Waterloo, Iowa.

A mixed evidentiary and stipulated hearing was held pursuant to Departmental rules found at 281--Iowa Administrative Code 6. Appellants seek reversal of a decision of the Board of Directors [hereinafter "the Board"] of the District made on November 27, 1995, which denied their applications for open enrollment to the Price Lab School on behalf of their five children beginning in the 1996-97 school year and thereafter. Authority and jurisdiction for the appeal is 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.

The Johnsons have five children currently attending three different schools in the Waterloo District: Michelle Johnson - 11th grade, West High School; Emily Johnson - 10th grade, West High School; Amber Johnson - 8th grade, Hoover Intermediate School; Craig Johnson - 5th grade, Kingsley Elementary School; and Brice Johnson - 3rd grade, Kingsley Elementary School.

The parents timely-filed open enrollment applications for their children to attend Price Lab School, which is affiliated with the University of Northern Iowa. Although the Johnsons detailed very specific reasons for their desire to open enroll out of the District, those reasons were not the basis for the denial of their applications and so it is unnecessary to recount those problems here. What is important for the purposes of this appeal, is the minority status of the applicant students as well as the minority enrollment of each of their schools. All five children are non-minority students and the minority enrollment of each of their schools is as follows: West High School is 23.3% minority; Hoover Intermediate is 16.5% minority; and Kingsley Elementary is 15% minority.¹

The District stipulated that the open enrollment/ desegregation policy applied to these facts is the same policy which was reviewed by the State Board of Education in the appeal of In re Megan, Mindy and Drew Engel, et al., 11 D.o.E. App. Dec. 262 (1994).

In Engel, the State Board examined the operation of the District's two-tiered process for approving applications for open enrollment and found part of the policy to be invalid; the same part of the policy that was applied here. The State Board's decision in Engel has been appealed to the Black Hawk County District Court and submitted to Judge Briner for judicial review. The Judge's decision has not yet been rendered, so the State Board's decision in Engel still stands.

For that reason, the District has stipulated and requested that the facts and background of the open enrollment/desegregation policy that was stated in Engel be incorporated by reference in this appeal. We have agreed to do that making changes to the minority/non-minority ratios to reflect current numbers for the 1995-96 school year. In addition, we have only repeated those background facts here that are necessary to understand the operation of the policy.

History of Desegregation Efforts in the District²

In early 1967, the District began to address racial isolation in several attendance centers by passing a resolution calling primarily for voluntary transfers of students from building to building to balance the ratio of minorities to non-minorities found to exist in violation of segregation rulings and laws. In the 1969-70 school year, the District created the Bridgeway magnet project at Grant Elementary School. In 1972-73, the District recognized that more aggressive action was needed because the voluntary transfer program had not effectively desegregated the District's school buildings.³ The Board then approved a plan that changed attendance center boundaries, paired some schools, closed others, and created a third high school in addition to retaining the voluntary transfer program.

¹1995 Ethnic Report for Waterloo Schools.

²The following sections on the history of Desegregation Efforts; open enrollment history and the development of the District's policy have been taken verbatim from the Engel decision.

³This undertaking, "at the behest of" the Department of (then) Public Instruction, encouraged a more rigorous and vigilant approach. Appellee's Exhibit B at pp. 5-7.

These efforts met with some resistance from the minority community, many of whom believed that the burden of desegregating the District was being placed on the backs of the minority (primarily black) students. There were demonstrations (dating from 1967), student walkouts, economic boycotts, and a lawsuit filed, all between the 1968-69 and 1971-72 school years.

In 1972, the State Board issued its nondiscrimination guidelines designed to help school districts end racial isolation and imbalance in many of Iowa's urban communities. The guidelines established that any building with a minority population in excess of 20 percent over the district's overall minority population would be deemed "out of compliance." That school district's board of directors would then be required to take action to reduce the minority percentage or defend the imbalance as nondiscriminatory (e.g., a planned "magnet school" or "50-50" school).

In the 1972-73 school year, the State Department found that eight District buildings were out of compliance.

Subsequently, more recent reviews ("Race Equity Reports") by the State show the following:

In 1989-90, three buildings were out of compliance with one more building within .8% of being so identified. The District's minority student percentage was then 22.8%; any building in excess of 42.8% was targeted.

In 1990-91, the minority student population had risen by 1% to 23.8%. That year 4 buildings were above the 43.8% maximum, including one (Roosevelt Elementary) at 71.1%.

In 1991-92, the minority percentage was still 23.8%. One of the buildings out of compliance the previous year (McKinstry) had been brought within the acceptable range, so only three remained above 43.8% minorities. Roosevelt's minority population was down to 67.8%, still well above the point of concern and attention, however.

In 1992-93 the minority student percentage rose to 25.1 (up 1.3%). The same three elementary schools remained out of compliance, with McKinstry within .1 of being so recognized.

In 1993-94, the District' minority student population rose to 26.2% and the same three schools were above the line: Grant Elementary at 52.6% (6.4% above the maximum), Longfellow Elementary (57.4%, or 11.2% over), and Roosevelt Elementary (72.6%, or 26.4% over).

There were just under 11,000 students enrolled in the District in the 1993-94 school year. Its budget was approximately \$74,000,000 for the operation of its educational programs in fourteen elementary schools, four intermediate (middle) schools, and two high schools plus a small

alternative high school program ("Expo"). The minority population of the city of Waterloo, as testified to by Board President Tom Wells, was approximately 17%. He may have misspoken, however, because Mr. Thorson and Dr. Kimmett testified that it was somewhere between 12 and 14%. The minority percentage of students of school age was 21%. There were close to 3400 Waterloo students attending private schools; most of those (95%) were white students who, if they were enrolled in the District, would reduce the minority student population to 21% of the student body.

The seven neighboring school districts outside Waterloo had almost no minority students; one apparently none at all. Cedar Falls had the largest minority enrollment of the contiguous districts at 5.8%.

Open Enrollment History

The District Board elected not to participate in the statutory statewide open enrollment program in 1990-91, the first year open enrollment was operative,⁴ under a provision of the new law entitling school districts involved in voluntary or court ordered desegregation to take the first year to prepare and anticipate the effects of the law on their desegregation efforts. See Iowa Code §282.18(14)(1989 Supp.). The District used that year to develop a policy ("JECCE") which included a provision limiting transfers out of the District if a non-minority student desiring open enrollment resided in any of six elementary attendance centers: Grant, Lincoln, Longfellow, McKinstry, or Roosevelt elementary schools or Logan Intermediate. These schools were either above the compliance point or within seven percentage points⁵ of exceeding the maximum minority student ratio.

Conversely, minority students in or assigned to buildings with low minority percentages were denied the opportunity to leave the District under open enrollment if they resided within the boundaries of Black Hawk, Elk Run, Jewett, Kingsley, and Orange elementary schools. These schools' minority populations were quite low, ranging from 1.4% at Elk Run to 10.8% at Kingsley.

The identification of these schools as "off limits" for open enrollment students, depending upon their race, was consistent with the voluntary transfer program's criteria.

⁴The open enrollment law went into effect July 1, 1989. Applications were filed from that date until November 1 for the subsequent (1990-91) school year pursuant to state statute. See Iowa Code §282.18(1)(1989 Supp.).

⁵There was no testimony in the Engel hearing that the "cut-off point" for open enrollment was originally seven percentage points below the noncompliance figure of 43.8%. However we found that to be the case in an earlier (1991) appeal involving the Waterloo District under its initial open enrollment desegregation policy. See In re Ronald and Jennifer McBride and Kenneth Hanson, 8 D.o.E. App. Dec. 229 at 232 (1991).

Open enrollment transfers into the District were treated the same, although in mirror image: white students asking to open enroll into buildings with low minority percentages would be denied that opportunity; minority students desiring to transfer into the Grant, Lincoln, Longfellow, McKinstry, or Roosevelt elementary schools or Logan Intermediate would be denied.⁶

Prior to the Engel hearing in 1994, 336 District residents had open enrolled out of Waterloo, an average of over 100 per year. Thirty-one of those approved were minorities (approximately 10%). At least one hundred and twelve open enrolled students (exactly *one-third*) were those whose families moved into Waterloo but exercised their right under the state open enrollment statute to keep their children in the previous (original) school district of attendance.

In November of 1992, the year before the appeals in the Engel case, the Board approved (on a 4-3 vote) *all* open enrollment applications for 1993-94 into (4) and out of (138) the District after a failed motion (3-4) to deny all open enrollment applications out of the District. This approval was in contravention of the Board's then existing policy JECCE regarding protection of the District's desegregation plan. The lengthy and undoubtedly animated discussion that occurred at the Board meeting that night included the following points and observations made by the various directors and administration officials:⁷

Mr. Christensen moved to deny all outgoing open enrollment "due to the ... pressures placed on the district to conform to the racial imbalances [sic] ... and the financial shortfall this will cause."

Superintendent Kimmitt "noted that each student leaving the district costs Waterloo Schools \$3336."

Mr. Wells indicated that "the Board couldn't use the argument that denying open enrollment applications out of the district will adversely affect the desegregation plan. He asserted that approving them will probably positively impact the plan in a technical sense... [because] buildings would be closer to being in compliance than if the applications were denied."

Dr. Kimmitt predicted that potential budget, staff, and program cuts might have to be made if all of the applications were approved.

⁶It is important to note, however, that both the state law and the District's policy reserved to school officials the right to assign incoming open enrollment students to any building. Therefore, although an application form might include a request for a certain building, that request need not be honored by the District. The District would not likely be inclined to increase the minority percentage in a building by its placement of an open enrollment student.

⁷The Board minutes of this meeting are excellent in that the discussion was recorded extensively on each speaker's point.

Mr. Lowe and Mr. Wells agreed that "people who want to leave the district should be allowed to do so."

Mr. Kammeyer disagreed and likened open enrollment to "throwing away thousands of dollars."

Mr. Thorpe said "the district has a responsibility not to let tax dollars leave and that the district must take a stand."

Mr. Christensen compared the results of open enrollment in the District to closing an entire elementary school, which would include teacher layoffs.

Mr. Schmitt said the law should be changed so that local tax dollars would not follow the student departing.

In the end, directors Wells, Schmitt, Jaquith and Lowe voted to let all applicants leave; directors Thorpe, Christensen, and Kammeyer voted nay on that motion, earlier voting aye on a motion to deny all applications for open enrollment out of the District.

The Development of the New Policy

In the late summer of 1993,⁸ a Policy Review Committee composed of directors Christensen and Lowe, Superintendent Kimmett, Board Secretary Sally Turner and other faculty and staff devised a new open enrollment desegregation policy.

The new policy has two "tiers" or levels, the District ratio and then the building ratio. The first tier for students seeking to leave the District under open enrollment, as testified to by director Wells and Mr. Thorson, the [then] central administrator responsible for open enrollment, occurs when the District determines and then applies the minority to non-minority student ratio in the District based upon the enrollment data collected and reported in September of the current school year. For 1993-94, that ratio was 1:3; for every minority student seeking to enroll from the District, three non-minority students would be eligible for approval.⁹

The second tier involves looking at the school to which the open enrollment applicant is assigned to see if his or her departure will adversely affect the desegregation plan.

⁸The Committee became aware that the Des Moines Independent Community School District's board of directors had, on June 29, 1993, adopted a new policy in response to many of the same concerns about the effects of open enrollment on its desegregation plan, its overall district-wide minority student population and, of course, its financial picture.

⁹This 1:3 ratio has not changed since 1993-94.

Students are selected for approval in the following manner:

1. Applications of siblings of previously approved students will be given first priority. ...
2. Transfer requests that would improve a building's racial balance will be given second priority.¹⁰ Students from this group will be approved in the order in which their applications were received.
3. All other transfer requests will be placed on a list by a random selection procedure. Transfers will be granted in the order in which they appear on the list. If one member of a family is selected through the random selection process, the names of all other family members applying that year shall be placed directly below the name of the first family member selected.

This is essentially the same policy as that adopted by the Des Moines schools, although the process to leave the district is reversed in Des Moines. (First the district determines whether a student can leave his or her building based upon the minority:non-minority composition and the race of the student seeking open enrollment. Then, if the student can leave his or her building, she or he "gets in line," figuratively speaking, to leave the district on the basis of the district-wide minority to non-minority student ratio, with siblings of previously approved open enrollment students being prioritized ahead of the individual requests subject to random selection.)

II. CONCLUSIONS OF LAW

In the appeal under consideration here, the only operative question is whether the desegregation policy applied in denying these open enrollment applications was the same policy that has already been ruled upon by the State Board of Education in the case of In re Megan, Mindy and Drew Engel, et al., 11 D.o.E. App. Dec. 262 (1994). The District has stipulated that it is. Once that fact is established, the only other relevant fact to be reviewed concerns the minority status of each of the applicants as well as the ratio of minorities to non-minorities in the students' attendance areas. These facts have also been established and are undisputed. These students are all non-minorities and reside in attendance areas which have not been closed to open enrollment on the building level. Finding that the controlling legal principles have already been decided by the State Board of Education in the case of In re Megan, Mindy, and Drew Engel, et al., *supra*, we reiterate and reaffirm that decision in both its findings and conclusions. As stated in Engel:

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¹⁰Translated, this means white students seeking to transfer out of buildings with very low minority percentages, and minority students seeking to transfer from buildings out of compliance or close to it (within 10%) will be given priority.

Is it necessary that the District maintain not only the ratio balances in the buildings (pursuant to the long standing resolution and desegregation plan) but also the 3:1 ratio of non-minority to minority students? We think not.

There is nothing sacred about the District's 26.2%¹¹ minority population that requires its maintenance. "Racial balance is not to be achieved for its own sake It is to be pursued when racial imbalance has been caused by a constitutional violation." Freeman v. Pitts, __ U.S. __, 112 S.Ct. 1430, __, 118 L.Ed.2d, 108, 135 (1992). ...

Engel at 276-277.

In summary, we find that the District Board's new desegregation provision of its open enrollment law is too broad a net; it captures many more students -- including those whose departure would cause a positive effect on the minority ratio within their assigned buildings -- than it needs to to [sic] protect the desegregation efforts of the District. Because we believe that both of the "rights" under the open enrollment law need to be given weight, and the policy before us places undue weight on a manufactured goal of maintaining the current District-wide minority percentage to the diminution of the parental choice right, the policy must fall.

Id. at 278.

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

III. DECISION

For the reasons stated above, the decision of the Board of Directors of the Waterloo Community School District, denying the open enrollment applications of Appellants is hereby recommended for reversal. There are no costs of this appeal to be assigned.

DATE

ANN MARIE BRICK, J.D.
ADMINISTRATIVE LAW JUDGE

DATE

CORRINE HADLEY, PRESIDENT
STATE BOARD OF EDUCATION

¹¹In 1995-96, the minority population in the District is 28%.